

Business separation conditions to apply between Transco NTS and RDNs

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Standard Special Condition A6. Conduct of Transportation Business

[THIS CONDITION, CONTAINED IN THE S8AA DRAFTING PROVIDES THE BASE OBLIGATION ON THE LICENSEE NOT TO ENGAGE IN DISCRIMINATORY CONDUCT. FOR THE NTS LICENSEE, THIS CONDITION IS AUGMENTED (THROUGH SPECIAL CONDITION C18) SO THAT IT PROHIBITS DISCRIMINATION BY THE NTS IN FAVOUR OF THE RDNS OVER, INTER ALIA, THE IDNS.]

FOR THE NTS LICENSEE, PARAGRAPHS 2(i) AND 3 ARE REPLACED BY PROVISIONS DEALING WITH THE ISSUES RAISED BY LNG (SEE SPECIAL CONDITION C1, NOT REPRODUCED HERE). THIS CHANGE IS EFFECTED THROUGH A SPECIAL CONDITION APPLICABLE TO THE NTS LICENSEE ONLY (SEE SPECIAL CONDITION C1 (AMENDMENTS TO STANDARD CONDITIONS AND STANDARD SPECIAL CONDITIONS APPLICABLE TO THE LICENSEE RELATING TO LNG).]

1. The licensee shall conduct its transportation business in the manner best calculated to secure that neither -
 - (a) the licensee or any affiliate or related undertaking of the licensee, nor
 - (b) any gas shipper or gas supplier,obtains any unfair commercial advantage including, in particular, any such advantage from a preferential or discriminatory arrangement, being, in the case of such an advantage accruing to the licensee, one in connection with a business other than its transportation business.
2. In this condition “transportation business” includes –
 - (i) storage arrangements which relate to the utilisation of:
 - (a) an offshore gas storage installation;
 - (b) storage cavities in natural strata;
 - (c) containers for the storage of gas in a liquid state; and
 - (d) the Provision of Metering Services and Meter Reading Services

- (ii) if the licensee has been designated as the Designated Registrar of Pipes pursuant to standard condition 33 (Designated Registrar of Pipes), the functions of the Designated Registrar of Pipes.

- 3. If the Authority, having regard, in particular, to any representations made to it by the licensee and other persons as to the extent to which there is competition in relation to the storage of gas in particular categories of the facilities mentioned in paragraph 2 and its view on that question, considers it appropriate that paragraph 2 should be modified by the omission of sub-paragraph (a), (b) or (c), then the sub-paragraph in question shall be omitted with effect from a date specified in a notice relating thereto published by the Authority for the purposes of this condition generally; and if all three sub-paragraphs come to be omitted, paragraph 2 and the reference thereto in the definition of “transportation business” in Standard Special Condition A3 (Definitions and Interpretation) shall cease to have effect.
- 4. *If the Authority, having regard, in particular, to any representations made to it by the licensee and other persons as to the extent to which there is competition in relation to either metering or meter reading and its view on that question, considers it appropriate that references to either the provision of metering services or of meter reading services should be deleted for the purpose of paragraph 2 of this condition, those references shall cease to have effect from the date or dates specified in a notice published by the Authority for that purpose.*

Special Condition C18. Conduct of the Transportation Business in respect of the NTS

[NEW CONDITION CONTAINED IN THE S8AA DRAFTING AMENDING STANDARD SPECIAL CONDITION A6 (CONDUCT OF THE TRANSPORTATION BUSINESS) TO EXTEND THE OBLIGATIONS CONTAINED IN THAT CONDITION TO PREVENT THE LICENSEE AS OPERATOR OF THE NTS FROM CONFERRING UNFAIR COMMERCIAL ADVANTAGES ON ITS RETAINED DISTRIBUTION NETWORKS.]

1. Standard Special Condition A6 (Conduct of the Transportation Business) shall be amended to insert the following text at paragraph 1(c):
“(c) nor the licensee’s business relating to the Distribution Networks which it owns;”

Special Condition C19. Undertaking from ultimate controller concerning non-discrimination between the NTS transportation activity and the Distribution Network transportation activity.

[NEW CONDITION CONTAINED IN THE S8AA DRAFTING REQUIRING THAT THE LICENSEE OBTAIN AN UNDERTAKING FROM ITS PARENT COMPANY TO APPLY THE ARRANGEMENTS BETWEEN THE NTS AND RDNS ON THE SAME BASIS AS CONTRACTS ENTERED INTO WITH NON-AFFILIATED BUSINESSES.

THE DEFINITION OF “RELEVANT GAS TRANSPORTER” IN PARAGRAPH 2 OF THIS CONDITION HAS BEEN CRAFTED TO EXCLUDE IGTS SINCE THIS CONDITION IS INTENDED TO PREVENT THE LICENSEE DISCRIMINATING BETWEEN IDNS AND RDNS.]

1. The licensee shall procure from each company or other person which is at any time an ultimate controller of the licensee a legally enforceable undertaking in favour of the licensee in the form specified by the Authority that the ultimate controller (the “covenantor”) will instruct and direct the licensee to conduct its transportation business in respect of the NTS in a manner such that the licensee’s business in respect of the Distribution Networks which it owns does not obtain any unfair commercial advantage (including any such advantage from a preferential or discriminatory arrangement) in particular through the licensee entering into arrangements which, if the businesses were not held within same company, would be contractual arrangements with the licensee’s business in respect of the Distribution Networks which it owns on terms which do not materially/unduly differ from corresponding contractual arrangements entered into between the licensee and any other relevant gas transporter.
2. In this condition, “relevant gas transporter” means any licensed gas transporter other than Transco plc in whose licence Standard Special Condition A1 (Application/Disapplication of Section A (Interpretation Application and Payments) and Section B (General) and Application/Disapplication of Standard Special Conditions applicable to both NTS and DN licensees) is effective.

Special Condition C20. Separation of NTS and Distribution Network Businesses

[N.B. NEW CONDITION FOR INCLUSION IN THE NTS LICENCE HELD BY TRANSCO PLC TO PUT IN PLACE MANAGERIAL AND OPERATIONAL PROTECTIONS TO ENSURE THAT THE NTS DOES NOT DISCRIMINATE IN FAVOUR OF THE RDN TRANSPORTATION BUSINESSES OPERATED BY TRANSCO.

SPECIAL CONDITION C20 WILL BE CONTAINED IN THE LICENCE RELATING TO THE NTS. IT IS ACCOMPANIED BY SPECIAL CONDITION C21 PROVIDING FOR THE LICENSEE TO APPOINT A COMPLIANCE OFFICER IN RESPECT OF ITS OBLIGATIONS UNDER THE CONDITION AND ESTABLISH A BOARD-LEVEL SUB-COMMITTEE TO OVERSEE THE ACTIVITIES OF THE COMPLIANCE OFFICER.

A SEPARATE CONDITION PROVIDING FOR MIRROR PROTECTIONS WILL BE PLACED IN TRANSCO'S LICENCE IN RESPECT OF THE RDNS AT SPECIAL CONDITION E10.]

1. The licensee, in carrying out its gas transportation business in respect of the NTS, shall put in place and at all times maintain such managerial and operational systems which are necessary to ensure that the licensee complies with the obligations contained in Standard Special Condition A6 (Conduct of the Transportation Business) (as amended by Special Condition C18).
2. Unless otherwise directed by the Authority, the licensee shall by no later 1 May 2005 have in place a statement (“**the statement**”), approved by the Authority, describing the practices, procedures and systems which the licensee has adopted (or intends to adopt) to secure compliance with paragraph 1.
3. Where the Authority does not indicate otherwise within 60 days of receipt of the statement, the statement shall be deemed to be approved by the Authority.
4. The statement shall in particular (but without prejudice to the generality of paragraph 1) set out how the licensee shall:

- (a) maintain appropriate managerial and operational independence of the gas transportation business in respect of the NTS from any associated gas transporter business;
 - (b) secure that no breach of the requirements of paragraph 1 shall occur as a result of any arrangements for access by any associated gas transporter business or by any person engaged in or in respect of the associated gas transporter business to:
 - (i) premises or parts of premises occupied by persons engaged in, or in respect of, the management or operation of the gas transportation business in respect of the NTS;
 - (ii) systems for the recording, processing or storage of data to which persons engaged in, or in respect of, the management or operation of the gas transportation business in respect of the NTS;
 - (iii) equipment, facilities or property employed for the management or operation of the gas transportation business in respect of the NTS; or
 - (iv) the services of persons who are (whether or not as their principal occupation) engaged in, or in respect of, the management or operation of the gas transportation business in respect of the NTS;
 - (c) manage the transfer of employees from the gas transportation business in respect of the NTS to any associated gas transporter business.]
5. The managerial and operational independence referred to in paragraph 4(a) above shall include the establishment of separate managerial boards for each of
- (a) the gas transportation business in respect of the NTS; and
 - (b) the gas transportation business in respect of the Distribution Networks which the licensee owns taken as a whole.

Such managerial boards shall be responsible for taking all substantial decisions relating to the business in respect of which they have been

established. Each member of those managerial boards who is also a director of Transco plc shall take such decisions as if he or she was a director of a legally incorporated company whose sole business is the business in respect of which the managerial board he or she is a member of has been established. Each managerial board shall have at least [X] Transco plc directors as members.

[N.B. PARAGRAPH 5 IS AIMED AT REQUIRING THAT KEY DECISIONS AFFECTING EITHER THE TRANSMISSION BUSINESS OR THE RETAINED DISTRIBUTION BUSINESS WILL BE TAKEN BY SEPARATE GOVERNING BODIES WITHIN TRANSCO (CURRENTLY KNOWN AS “DEC” AND “TEC”), AND THAT DIRECTOR’S DUTIES APPLY AT TEC & DEC LEVEL.]

The licence shall revise the statement prepared in accordance with paragraph 2 where circumstances change such that the statement prepared in accordance with paragraph 2 no longer secures compliance with paragraph 1. Such revision of the statement shall only become effective once the Authority has approved the revised statement in accordance with paragraphs 2 or 3.

6. The licensee shall take all reasonable measures to ensure compliance with the terms of the statement as from time to time revised and approved by the Authority.
7. The licensee shall publish a copy of the approved statement prepared in accordance with paragraph 2 (or the latest approved revision) on its company’s website within five working days of its approval by the Authority.
9. In this Condition “associated gas transporter business” means an affiliate, related undertaking, or business unit of the licensee which operates a gas transportation business in respect of one or more Distribution Networks.

Special Condition C21. Appointment and duties of the business separation compliance officer

[N.B. NEW CONDITION APPLICABLE TO THE NTS LICENCE TO ACCOMPANY SPECIAL CONDITION C20 IN THE LICENCE RELATING TO THE NTS.

THE PROVISIONS CONTAINED IN THIS CONDITION REQUIRE THE LICENSEE TO APPOINT A COMPLIANCE OFFICER, REPORTING TO A BOARD-LEVEL COMPLIANCE COMMITTEE, TO OVERSEE THE OBLIGATIONS OF THE LICENSEE NOT TO ENGAGE IN ANY DISCRIMINATION IN FAVOUR OF ITS RDN BUSINESSES. AS SUCH, THE COMPLIANCE OFFICER AND COMPLIANCE COMMITTEE WILL BE IN A POSITION TO ACT AS THE “INTERNAL CONSCIENCE” OF THE BUSINESS TO ENSURE THAT THE OBLIGATIONS SET OUT IN STANDARD SPECIAL CONDITION A6 AND SPECIAL CONDITION C20 ARE COMPLIED WITH.]

1. The licensee shall ensure, following consultation with the Authority that a competent person (who shall be known as the “business separation compliance officer”) shall be appointed for the purpose of facilitating compliance by the licensee with Special Condition C20 (Separation of NTS and Distribution Network Businesses), Special Condition C19 (Undertaking from ultimate controller concerning non-discrimination between the NTS transportation activity and the Distribution Network transportation activity) and Standard Special Condition A35 (Prohibition of Cross Subsidies)(together, the “relevant duties”). The business separation compliance officer may be the same person as is appointed as compliance officer under Standard Special Condition A34 (Appointment of Compliance Officer).
2. The licensee shall at all times ensure that the business separation compliance officer is engaged for the performance of such duties and tasks as are appropriate for the purpose specified in paragraph 1, which duties and tasks shall include those set out at paragraph 6.
3. The licensee shall establish a compliance committee (being a sub-committee of the board of directors of the licensee) for the purpose of overseeing and

ensuring the performance of the duties and tasks of the business separation compliance officer set out in paragraph 2 and the compliance of the licensee with its duties under Special Condition C20 (Separation of NTS and Distribution Network Businesses). Such compliance committee shall report to the audit committee of the ultimate controller of the licensee and shall include among its members such person in the licensee's business as is responsible for the management of regulatory issues relating to the licensee.

[N.B. THIS AMENDMENT IS AIMED AT ENSURING THAT TRANSCO'S DIRECTOR OF REGULATION IS A MEMBER OF THE COMPLIANCE COMMITTEE.]

4. The licensee shall procure that the business separation compliance officer:
 - (a) is provided with such staff, premises, equipment, facilities and other resources; and
 - (b) has such access to the licensee's premises, systems, information and documentation

as, in each case, he might reasonably expect to require for the fulfilment of the duties and tasks assigned to him.

5. The licensee shall make available to the business separation compliance officer a copy of any complaint or representation received by it from any person in respect of a matter arising under or by virtue of Special Condition C20 (Separation of NTS and Distribution Network Businesses).
6. The duties and tasks assigned to the compliance officer shall include:
 - (a) providing advice and information to the licensee (including individual directors of the licensee) and the compliance committee established under paragraph 3 of this condition for the purpose of ensuring the licensee's compliance with the relevant duties;
 - (b) monitoring the effectiveness of the practices, procedures and systems adopted by the licensee in accordance with the statement referred to at paragraph 2 of Special Condition C20 (Separation of NTS and Distribution Network Businesses);

- (c) advising whether, to the extent that the implementation of such practices, procedures and systems require the co-operation of any other person, they are designed so as reasonably to admit the required co-operation;
- (d) investigating any complaint or representation made available to him in accordance with paragraph 5;
- (e) recommending and advising upon the remedial action which any such investigation has demonstrated to be necessary or desirable;
- (f) providing relevant advice and information to the licensee (including individual directors of the licensee) and the compliance committee established under paragraph 3 of this condition, for the purpose of ensuring its implementation of;
 - (i) the practices, procedures and systems adopted in accordance with the statement referred to at paragraph 2 of Special Condition C20 (Separation of NTS and Distribution Network Businesses); and
 - (ii) any remedial action recommended in accordance with subparagraph (e);
- (g) reporting to the compliance committee any instances which come to his attention of a member of either of the management boards established under paragraph 5 of Special Condition C20 (Separation of NTS and Distribution Network Businesses) taking into account the interests of a business other than that in respect of which the managerial board of which he is a member of has been established. All such reports shall be copied to the members of the licensee's audit committee; and
- (h) reporting annually to the compliance committee established under paragraph 3 of this condition, in respect of each year after this Special Condition comes into force, as to his activities during the period covered by the report, including the fulfilment of the other duties and tasks assigned to him by the licensee.

7. As soon as is reasonably practicable following each annual report of the business separation compliance officer, the licensee shall produce a report:
 - (a) as to its compliance during the relevant year with the relevant duties; and
 - (b) as to its implementation of the practices, procedures and systems adopted in accordance with the statement referred to at paragraph 2 of Special Condition C20 (Separation of NTS and Distribution Network Businesses).
8. The report produced in accordance with paragraph 6 shall in particular:
 - (a) detail the activities of the business separation compliance officer during the relevant year;
 - (b) refer to such other matters as are or may be appropriate in relation to the implementation of the practices, procedures and systems adopted in accordance with the statement to at paragraph 2 of Special Condition C20 (Separation of NTS and Distribution Network Businesses); and
 - (c) set out the details of any investigations conducted by the business separation compliance officer, including:
 - (i) the number, type and source of the complaints or representations on which such were based;
 - (ii) the outcome of such investigations; and
 - (iii) any remedial action taken by the licensee following such investigations.
9. The licensee shall submit to the Authority a copy of the report produced in accordance with paragraph 6 of this condition, and shall publish the report on its website.

Special Condition E10. Separation of NTS and Distribution Network Businesses

[N.B. NEW CONDITION FOR INCLUSION IN THE LICENCES HELD BY TRANSCO PLC IN RELATION TO THE RDNS REQUIRING THE RDNS TO COMPLY WITH THE STATEMENT PROVIDED FOR IN PARAGRAPH 2 OF SPECIAL CONDITION C20 OF THE LICENCE IN RESPECT OF THE NTS RELATING TO BUSINESS SEPARATION BETWEEN THE NTS AND DNS. THE LICENSEE MUST ALSO APPOINT A COMPLIANCE COMMITTEE AND COMPLIANCE OFFICER IN RESPECT OF ITS COMPLIANCE WITH THAT STATEMENT.]

1. The licensee shall take all reasonable measures to ensure compliance with the terms of the statement prepared in accordance with paragraph 2 of the Special Condition C20 of the licence which the licensee holds in respect of its operation of the NTS as from time to time revised and approved by the Authority. In particular, the licensee shall ensure that no affiliate, related undertaking, or business unit of the licensee which operates a gas transportation business in respect of one or more Distribution Networks solicits any action from the licensee in its operation of the NTS which would constitute a breach of Standard Special Condition A6 (Conduct of the Transportation Business). To the extent required the statement shall be construed appropriately in respect of the licensee's business in respect of the Distribution Networks which it owns.
2. The managerial and operational independence of the gas transportation business in respect of the Distribution Networks which the licensee owns from any associated gas transporter business which is required to be demonstrated by the statement referred to in paragraph 1 above shall include the establishment of separate managerial boards for each of
 - (a) the gas transportation business in respect of the Distribution Networks which the licensee owns taken as whole; and
 - (b) the gas transportation business in respect of the NTS.

Such managerial boards shall be responsible for taking all substantial decisions relating to the business in respect of which they have been established. Each member of those managerial boards who is also a director of Transco plc shall take such decisions as if he or she was a director of a legally incorporated company whose sole business is the business in respect of which the managerial board he or she is a member of has been established. Each managerial board shall have at least [X] Transco plc directors as members.

[N.B. PARAGRAPH 2 IS AIMED AT REQUIRING THAT KEY DECISIONS AFFECTING THE RETAINED DISTRIBUTION BUSINESS AND THE TRANSMISSION BUSINESS WILL BE TAKEN BY SEPARATE GOVERNING BODIES WITHIN TRANSCO (CURRENTLY KNOWN AS “DEC” AND “TEC”), AND THAT DIRECTOR’S DUTIES APPLY AT TEC & DEC LEVEL.]

3. The licensee shall appoint a business separation compliance officer for the purposes of facilitating compliance with this condition on the same terms and with the same duties as the licensee shall appoint a compliance officer in respect of Special Condition C21 (Appointment and duties of the business separation compliance officer) of the licensee’s licence in respect of its operation of the NTS.
4. The licensee shall establish a compliance committee (being a sub-committee of the board of directors of the licensee) for the purpose of overseeing and ensuring the performance of the duties and tasks of the compliance officer set out in paragraph 2 and the compliance of the licensee with its duties under paragraph 1. The compliance committee shall have the same duties in respect of the Distribution Networks which the licensee owns as the compliance committee established in respect of the NTS (as set out in Special Condition C21 (Appointment and duties of the business separation compliance officer) of the licence which the licensee holds in respect of its operation of the NTS). Such compliance committee shall include among its members such person in the licensee’s business as is responsible for the management of regulatory issues relating to the licensee.

