

NOTICE UNDER SECTION 23(3) OF THE GAS ACT 1986

MODIFICATIONS PROPOSED TO THE TWO GAS TRANSPORTERS LICENCES HELD BY TRANSCO PLC¹

This notice (the “**Notice**”) is issued by the Gas and Electricity Markets Authority (the “**Authority**”) under section 23(3) of the Gas Act 1986 (the “**Act**”) in connection with National Grid Transco plc’s (“**NGT**”) sale of four of Transco plc’s (“**Transco**”) local gas distribution networks (“**DNs**”) (the “**Transaction**”).

Scope of Notice

The Authority pursuant to section 23(3) of the Act gives notice that it proposes to modify the two gas transporters (“**GT**”) licences currently held by Transco² in respect of its National Transmission System (NTS) (the “**Original Transco Licence**” – as further defined in paragraph 1 below) and the retained distribution business (RDN) (the “**RDN Additional Transco Licence**” – as further defined in paragraph 14 below). As these proposed modifications relate to:

- (i) an amendment to Special Condition C19 (Undertaking from ultimate controller concerning non-discrimination between the NTS transportation activity and the Distribution Network transportation activity) in the Original Transco Licence; and
- (ii) a proposed new Special Condition E9 (Undertaking from ultimate controller concerning non-discrimination between the Distribution Network transportation activity and the NTS transportation activity) in the RDN Additional Transco Licence. It is proposed that this new Special Condition E9 in the RDN Additional Transco Licence will be largely equivalent to Special Condition C19 (as proposed to be modified in this Notice) in the Original Transco Licence,

¹ On 25 May 2005, the Authority granted its unconditional consents to Transco to dispose of the shares in Blackwater F Limited, Blackwater G Limited, Blackwater SC A Limited and Blackwater 2 Limited (the owners of the four independent gas distribution networks (IDNs)). This is explained further later in this notice and the Authority’s consent to disposal can be found at http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/11553_Sharesaledirection.pdf. Accordingly, since 1 May 2005 Transco has held only two gas transporters licences (one in respect of its National Transmission System and one in relation to its retained Distribution Networks and since 1 June 2005, Transco has ceased to hold the shares in the four IDNs).

² It should be noted that these proposed modifications do not apply to the four IDN GT Licences held by each of Blackwater F Limited, Blackwater G Limited, Blackwater SC A Limited and Blackwater 2 Limited.

the Authority is proposing these modifications to the Original Transco Licence and the RDN Additional Transco Licence under section 23(3) of the Act and it is not seeking to use either the private or statutory collective licence modifications procedures as the changes relate to Transco only and the private and statutory collective licence modification procedures have no application to Parts C and E of the Original Transco Licence or the RDN Additional Transco Licence respectively.

Background

1. Transco (a company registered in England & Wales with company number 2006000) is the holder of a gas transporters (“**GT**”) licence treated as granted under section 7 of the Act which was amended and restated by a licensing scheme made by the Secretary of State for Trade and Industry (the “**Secretary of State**”) pursuant to Paragraph 19 of Schedule 7 to the Utilities Act 2000 on 28 September 2001 (the “**Original Transco Licence**”).
2. On 22 July 2004, the Authority issued a notice under sections 7(5) and 8(4) of the Act stating that Transco had (in connection with the Transaction) applied for eight additional GT licences which the Authority was minded to grant on the basis that any surplus licences could be revoked.
3. Pursuant to section 7 of the Act, on 5 November 2004, the Authority (without in any way fettering its discretion in relation to the Transaction) granted five additional GT licences to Transco (the “**Additional Licences**”) (one of which was the RDN Additional Transco Licence) rather than the eight originally applied for by Transco³ and Transco formally withdrew its remaining three applications. The five Additional Licences were granted in substantially the same form as the Original Transco Licence and a copy of the form in which the Additional Licences were granted can be found on Ofgem’s website⁴.
4. The Original Transco Licence and the five Additional Licences are together referred to in this Notice as the “**Six Licences**”.

³ This reflects the Authority’s decision in November 2004 not to require each of the DNs to be retained by NGT (the “**RDNs**”) to be held in separate legal entities

⁴http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/9161_A_copy_of_the_GT_Licences__issued_to_Transco__05.11.04_1.pdf

5. Until 1 February 2005 all gas transportation assets owned by Transco were operated pursuant to the Original Transco Licence. Until 1 February 2005, the five Additional Licences, whilst active, did not relate to any particular gas transportation assets owned or operated by Transco.

The Modification process to date: November 2004 section 23 Notice

6. As part of the Transaction, pursuant to section 23(3) of the Act, on 25 November 2004 the Authority published a notice proposing modifications to each of the Six Licences⁵ (the “**Initial S.23 Notice**”) together with an explanatory document⁶.
7. The Initial S.23 Notice sought to consult on the Authority’s proposal (as part of the Transaction) to separate the price controls (as set out in the Original Transco Licence) to achieve revenue separation between Transco’s National Transmission System (the “**NTS**”) and each of the DNs which have been disposed of by Transco (the “**IDNs**”) and each of those DNs which have been retained by Transco (the “**RDNs**”). The Initial S.23 Notice stated that the effect of the proposed modifications would be that each of the five Additional Licences would relate to specific DN assets and the Original Transco Licence would relate to the NTS assets only.
8. As part of the Transaction, Transco proposed to hive-down the four IDNs (the North of England DN, the Scotland DN, the South of England DN and the Wales and West DN) to four wholly owned Transco subsidiary companies respectively (Blackwater F Limited, Blackwater SC A Limited, Blackwater G Limited and Blackwater 2 Limited). In addition, Transco proposed to transfer four of the five Additional Licences to each of the four wholly owned subsidiary companies.
9. Following hive-down of the four IDNs and transfer of the four relevant licences, Transco proposed to sell the shares in each of the four relevant wholly owned subsidiary companies to third party purchasers.
10. The hive-down of the four relevant IDNs from Transco to the four relevant wholly owned subsidiary companies required, inter alia, the consent of the Authority pursuant to Amended Standard Condition 29 of the Original Transco

⁵ http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/gasdistributionnetworksale&levelids=,1_8936#top8936

⁶ National Grid Transco – Potential sale of gas distribution network businesses. Licensing: Next Steps. Formal consultation under Section 23 and informal consultation under Section 8AA of the Gas Act 1986, Ofgem November 2004 263/04

Licence. It was made clear in the Initial S.23 Notice and the accompanying explanatory document that the modifications proposed in the Initial S.23 Notice would only be directed by the Authority if the Authority granted its consent to Transco to hive-down the four relevant IDNs under Amended Standard Condition 29 of the Original Transco Licence.

11. On 12 January 2005, the Authority received four applications from Transco seeking the Authority's consent under Amended Standard Condition 29 of the Original Transco Licence to dispose of the four relevant IDNs from Transco to its four relevant wholly owned subsidiary companies as part of the Transaction.
12. On 20 January 2005, the Authority met in a duly convened meeting to consider Transco's applications. After careful consideration, the Authority granted its consent to Transco under Amended Standard Condition 29 of the Original Transco Licence to dispose of the four relevant IDNs from Transco to its four relevant wholly owned subsidiary companies (the "**Consents Directions**")⁷. Such disposal was not to take place prior to 1 May 2005. The Authority's consents were granted on a conditional basis. Transco was required to satisfy a number of conditions precedent before the consents became effective. In addition, the Authority attached a number of conditions subsequent to its consents. In particular (and without limitation) the Authority's further consent was required in relation to a number of aspects of the Transaction. Without limitation, as a condition to the Authority's consent, Transco was prohibited from selling the shares in the four relevant wholly owned subsidiary companies without the prior consent of the Authority.
13. The hive-down of the four relevant IDNs from Transco to its four relevant wholly owned subsidiary companies also required the consent of the Secretary of State under Amended Standard Condition 29 of the Original Transco Licence. The Secretary of State granted this consent on 27 January 2005.
14. On 1 February 2005, in accordance with the powers contained in section 23 of the Act and with the written consent of Transco in respect of each of the Six Licences, the Authority issued a direction modifying the licence conditions in each of the Six Licences in the manner largely specified in the Initial S.23 Notice

⁷ http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/10034_2105.pdf

respectively with effect from 1 February 2005⁸. As a result, since 1 February 2005, there has been revenue separation between the NTS and each of the four IDNs disposed of by Transco and each of the four RDNs retained by Transco. Also since that date four relevant Additional Licences respectively have related only to each of the four IDNs disposed of by Transco (referred to in this Notice as the “**IDN Additional Licences**”), one of the Additional Licences relates only to the four RDNs retained by Transco (referred to in this Notice as the “**RDN Additional Transco Licence**”) and the Original Transco Licence relates to the NTS only.

The Modification Process to date: February 2005 Section 8AA and Section 23 Notices.

15. As part of the Transaction pursuant to section 23(3) and section 8AA of the Act, on 14 February 2005 the Authority published two notices proposing modifications to each of the Six Licences⁹ together with an explanatory document¹⁰. The notice published pursuant to section 8AA of the Act (the “**S.8AA Notice**”) gave notice that the Authority proposed to grant consent to transfer each of the IDN Additional Licences from Transco to the four relevant wholly owned Transco subsidiary companies (the “**Transfers**”). The S.8AA Notice also proposed that as a condition of the consent to the Transfers, each of the IDN Additional Licences would be modified. The notice published pursuant to section 23(3) of the Act (the “**Second S.23 Notice**”) proposed to modify the Original Transco Licence and the RDN Additional Transco Licence.
16. The S.8AA Notice and the Second S.23 Notice sought to consult on the Authority’s proposal (as part of the Transaction) to restructure the Six Licences to ensure that they could operate in a divested industry structure. The S.8AA Notice and the Second S.23 Notice stated that the effect of the proposed modifications would be to restructure each of the IDN Additional Licences, the RDN Additional Transco Licence and the Original Transco Licence to support a divested industry structure with the intention of protecting the interests of customers in the event that Transco sold one or more of its IDNs.

⁸ http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/10043_2405.pdf

⁹ http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/gasdistributionnetworksale&levelids=,1_9669#top9669

¹⁰ National Grid Transco – Potential sale of gas distribution network businesses. Licensing: Next Steps. Formal consultation under Section 23 and informal consultation under Section 8AA of the Gas Act 1986, Ofgem November 2004 263/04

17. On 25 April 2005 the Authority met at a duly convened Authority meeting to consider certain matters relating to the Transaction including, without limitation, the conditions precedent attached to the Consent Directions, Urgent Modification Proposal 0745 relating to Transco's Network Code and the consultation conducted pursuant to the S.8AA Notice and the Second S.23 Notice.
18. Having had due regard to its principal objective and statutory and other public law duties and the statutory duties of GTs, and having carefully considered representations received in response to the various consultations, on 25 April 2005, the Authority:
- a. issued an open letter (the "**ASC 29 Decision Letter**") stating that the conditions precedent to the Consent Directions had been sufficiently satisfied to allow hive-down on 1 May 2005 (or such later date as the Authority may direct in writing)¹¹;
 - b. issued a decision letter relating to Urgent Modification Proposal 0745 (the "**0745 Decision Letter**") stating that the Authority approved Urgent Modification Proposal 0745 to Transco's Network Code to take effect on 1 May 2005 (or such later date as the Authority may direct) and, accordingly, on 1 May 2005, or such later date as the Authority may direct, Transco's existing Network Code would therefore become the NTS and RDN businesses' short form code;
 - c. issued a consent and direction pursuant to section 8AA of the Act (the "**S.8AA Consent and Direction**") directing that each of the IDN Additional Licences be modified on 25 April 2005 but that such modifications would take effect on 1 May 2005 (or such other date as the Authority may direct) by way of a separate direction (the "**S.8AA Associated Direction**") and consenting to the transfer of the four IDN Additional Licences from Transco to the four relevant wholly owned Transco subsidiary companies; and

¹¹ However, in the ASC 29 Letter, the Authority indicated that before hive-down could complete, the Authority intended to write to Transco requesting its confirmation that the conditions precedent had been fully satisfied.

- d. issued a direction pursuant to section 23 of the Act (the “**Second S.23 Direction**”) directing that the Original Transco Licence and the RDN Additional Transco Licence be modified on 25 April 2005 but that such modifications would take effect on 1 May 2005 (or such other date as the Authority may direct) by way of a separate direction (the “**S.23 Associated Direction**”).

The sequencing of the above decisions, including the 0745 Decision Letter was addressed in the S.8AA Associated Direction and the S.23 Associated Direction.

19. As a result of the ASC 29 Decision Letter, the 0745 Decision Letter, the S.8AA Consent and Direction and the Second S.23 Direction the Authority permitted Transco to take the necessary steps towards proceeding to hive-down on 1 May 2005 (or such later date as the Authority may direct). On 29 April 2005, the Authority issued a further letter (the “**Final Hive Down Approval letter**”) in which the Authority outlined its view that it was satisfied that the conditions precedent had been fulfilled and that hive-down could proceed¹². On 1 May 2005, the modifications to restructure the Six Licences were brought into effect, Transco’s Network Code was modified to become the NTS and RDN businesses’ short form code and each of the IDN Additional Licences transferred from Transco to respectively each of Blackwater G Limited, Blackwater F Limited, Blackwater 2 Limited and Blackwater SC A Limited together with the DN assets to which each of the IDN Additional Licences relates.

The Modification process to date: 26 April 2005 Section 23 Notice

20. Under NGT’s commercial timetable for the Transaction, at the time of hive-down, the regulatory arrangements which, in the Authority’s opinion, were necessary to protect the interests of customers in a divested industry structure were not fully in place. Further modifications to each of the Six Licences were therefore required in order to seek to ensure that customers’ interests were protected in a divested industry structure.

¹²

The Authority, in its ASC 29 Decision Letter, stated that consent to hive-down would not be given until a further notice setting out that the conditions precedent had been satisfied in full had been issued. Ofgem wrote to Transco on 27th April 2005 requesting a final hive-down report to include Transco’s view on its compliance with the conditions precedent. The Final Hive Down Approval Letter was issued following Ofgem’s receipt of Transco’s response.

21. As a result, on 26 April 2005, the Authority pursuant to section 23(3) of the Act, gave notice (the "Third S.23 Notice")¹³ that it was proposing, as part of the Transaction, to modify further the conditions of each of the Six Licences as set out in the Third S.23 Notice, the annexes and the explanatory document (including its appendices) which accompanied the Third S.23 Notice¹⁴.
22. The Third S.23 Notice was in two parts. Part 1 related to general modifications in response to views of the respondents to the consultation conducted by the Authority in relation to the S.8AA Notice and the Second S.23 Notice. Part 2 related to the introduction of interim incentive arrangements on the NTS and DNs and certain general modifications to the price control conditions in response to views of the respondents to the consultation conducted by the Authority in relation to the S.8AA Notice and the Second S.23 Notice. The Authority noted that if, following consideration of respondents' views in relation to the Third S.23 Notice, the Authority considered that all or any of the modifications proposed in one or both of these Parts should not be made or that such modifications should be made at different times, the Authority, in its discretion, reserved the right to consider it appropriate to direct the modifications proposed in the Third S.23 Notice in part only.

The Authority's consent to share sale

23. On 25 May 2005, the Authority met at a duly convened Authority meeting to consider various aspects of the Transaction including, without limitation, the conditions subsequent attached to the Consent Directions and the consultation conducted pursuant to the Third S.23 Notice.
24. Having due regard to its principal objective and statutory and other public law duties and the statutory duties of GTs, and having carefully considered representations to the various consultations and its decisions in January 2005 (described at paragraphs 12 to 14 (inclusive) above) and April 2005 (described at paragraphs 17 to 19 (inclusive) above), on 25 May 2005, the Authority

¹³ http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/11329_Appendix_6_S23notice.pdf

¹⁴ http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/11343_FinalProposalsforInterimIncentivesFormalconsultation.pdf

- a. issued an open letter (the “Conditions Subsequent Letter”)¹⁵ stating that the conditions subsequent had been sufficiently satisfied to allow share sale to proceed on 1 June 2005;
- b. with the written consent of Transco, Blackwater 2 limited, Blackwater F Limited, Blackwater G Limited and Blackwater SCA Limited (as required by section 23 of the Act) and in accordance with the powers contained in section 23 of the Act, directed (the “Third S.23 Direction”) that each of the Six Licences be modified in the form set out in the Third S.23 Direction but that such modifications shall take effect in accordance with the terms of the S.23 Direction. The modifications were to take effect in the case of each IDN Additional Licence contemporaneously with the completion of the sale of the shares in respect of the relevant company and in the case of the Original Transco Licence and the RDN Additional Licence immediately after the completion of the share sales which actually take place on 1 June 2005 in each case in accordance with the terms of the Third S.23 Direction; and
- c. issued a direction consenting to the sale of the entire issued share capital of each of the relevant wholly owned Transco subsidiaries as follows:-

Distribution Network	Blackwater Company	Purchaser
North of England DN	Blackwater F Limited	Gas Network Limited
Scotland DN	Blackwater SC A Limited	Scotia Gas Networks Limited
South of England DN	Blackwater G Limited	Scotia Gas Networks Limited
Wales & West DN	Blackwater 2 Limited	MGN Gas Networks (Senior Finance) Limited

25. On 1 June 2005, each of the share sales listed in the above table completed. Accordingly, the relevant modifications took effect on 1 June 2005 in each of the Six Licences in accordance with the Third S.23 Direction.

¹⁵ Gas Distribution Network Sales – Final consent to sale of four of National Grid Transco’s gas distribution networks, Ofgem May 2005

The modification process to date: the need for further modifications

26. The modifications to Special Condition C19 of the Original Transco Licence proposed in this Notice are proposed by way of clarification and are consistent with the Authority's previous decisions on business separation in the context of the Transaction. Furthermore, the Authority is also of the view that it is appropriate to introduce a new licence condition, Special Condition E9 (Undertaking from ultimate controller concerning non-discrimination between the Distribution Network transportation activity and the NTS transportation activity) into the RDN Additional Transco Licence. Again, this is consistent with the Authority's previous decisions in the context of DN sales on business separation. Special Condition C19 (as amended) and Special Condition E9 condition will seek to ensure that the policy objective of the Authority, namely that the NTS and RDN licensees have conditions in place that mimic the effects of legal separation, is delivered in full and unambiguously.
27. In order to make the modifications set out in this Notice to the Original Transco Licence and the RDN Additional Transco Licence, the consent of the licensee is required. This means only the consent of Transco is required.
28. However, in light of the consent to share sale described above, Ofgem would particularly hope to receive comments on the proposed modifications from, amongst others, other DN companies, as set out in paragraph 24 above and other interested parties.

Additional Information

29. The information in this Notice is not binding on the Authority. Nothing in this Notice is to be construed as granting any rights or imposing any obligations on the Authority. The Authority's discretion will not be fettered by any statements made in this Notice.

The Authority hereby gives notice pursuant to section 23(3) of the Act as follows:-

Proposed modifications

30. The Authority proposes to modify Special Condition C19 (Undertaking from ultimate controller concerning non-discrimination between the NTS transportation activity) in the Original Transco Licence, as follows:

- a. to propose a new paragraph 1 to set out the purpose of this condition;
- b. to make other changes to clarify the nature of the obligation and in particular (but without limitation) the need to ensure that;
 - (i) arm's length written arrangements on commercial terms are entered into in any case where the NTS provides or procures services to or from the RDN; and
 - (ii) arrangements between the NTS and the RDN do not unduly differ from those that would apply if the NTS had entered into a contract with an IDN.

31. A copy of the proposed modifications in paragraph 30 can be found in Appendix A.

32. The Authority also proposes a new condition as Special Condition E9 (Undertaking from ultimate controller concerning non-discrimination between the Distribution Network transportation activity and the NTS transportation activity) in the RDN Additional Licence. A copy of this condition can be found in Appendix B. Special Condition E9 covers instances in which the RDN provides or procures services to or from the NTS and largely reflects the terms of Special Condition C19 (amended as proposed in this Notice) of the Original Transco Licence.

33. The reasons for and the effect of the proposed modifications are set out above. Further information regarding DN sales can be found in the documents listed in Appendix C.

Documents

34. Copies of the proposed licence modifications are attached to this Notice. The other documents referred to in this Notice are available (free of charge) from the Ofgem Research and Information Centre (Tel: 0207 901 7003) or on the Ofgem website at www.ofgem.gov.uk

Representations and objections

35. Any representations or objections with respect to the proposed modifications to the two GT Licences held by Transco must be made before 5pm on Tuesday 30 June 2005 and should be addressed to:

Mark Feather

Ofgem

9 Millbank

London

SW1P 3GE

Email: mark.feather@ofgem.gov.uk

36. Respondents are free to mark their reply as confidential, although Ofgem would prefer, as far as possible, open responses that can be placed in the Ofgem library. Ofgem would also prefer that non-confidential responses are sent electronically so that they can be placed on the Ofgem website.

37. If you wish to discuss any aspect of this Notice, Mark Feather (telephone 020 7901 7437) would be pleased to help.

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Sonia Brown

Director, Transportation

Duly authorised on behalf of the Authority

2 June 2005

Appendix A

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

1. Consistently with the undertaking to be procured under paragraph 2 below, where the licensee:
 - (a) procures services from a DN operator, the licence for which is held in the same legal entity as the licensee; and/or
 - (b) provides services to such DN operator,notwithstanding the fact that these licences are held in the same legal entity, the licensee shall enter into and comply with written arrangements for the provision and/or procurement of services between the licensee and such DN operator. Such arrangements are to be entered into on arm's-length commercial terms having the same effect as, and not being unduly different from, those which would apply:
 - (i) if the licensee entered into a contract with a relevant gas transporter to provide and/or procure the same services (regardless of whether such contract exists or not); and
 - (ii) if the licensee and such DN operator were in fact held in separate and unrelated legal entities.
2. 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 will instruct, direct and procure that the licensee shall:
 - (a) conduct its transportation business in a manner best calculated to secure that the businesses of DN operators, the licences for which are held by the holder of this licence in the same legal entity, do not obtain any unfair commercial advantage (including any such advantage from a preferential or discriminatory arrangement); and

- (b) enter into and comply with written arrangements, which, if the businesses of such DN operators were not held within the same legal entity, would be a contract on arm's-length commercial terms.

3. The licensee shall:

- (a) deliver to the Authority evidence (including a copy of each such undertaking) that the licensee has complied with its obligation to procure undertakings pursuant to paragraph 2;
- (b) inform the Authority immediately in writing if the directors of the licensee become aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached; and
- (c) comply with any direction from the Authority to enforce any such undertaking;

and shall not, save with the consent in writing of the Authority, enter (directly or indirectly) into any agreement or arrangement with any ultimate controller of the licensee or any of the subsidiaries of any such corporate ultimate controller (other than the subsidiaries of the licensee) at a time when –

- (i) an undertaking complying with paragraph 2 is not in place in relation to that ultimate controller; or
- (ii) there is an unremedied breach of such undertaking; or
- (iii) the licensee is in breach of the terms of any direction issued by the Authority under paragraph 3 of this condition.

4. In this condition, “relevant gas transporter” shall have the meaning given in Standard Special Condition A3 (Definitions and Interpretation) save that it shall exclude Transco plc both in its capacity as the licensee and in its capacity as a DN operator.

Appendix B

Special Condition E9. Undertaking from ultimate controller concerning non-discrimination between the Distribution Network transportation activity and the NTS transportation activity

1. Consistently with the undertaking to be procured under paragraph 2 below, where the licensee:
 - (a) procures services from an NTS operator, the licence for which is held in the same legal entity as the licensee; and/or
 - (b) provides services to such NTS operator,notwithstanding the fact that these licences are held in the same legal entity, the licensee shall enter into and comply with written arrangements for the provision and/or procurement of services between the licensee and such NTS operator. Such arrangements are to be entered into on arm's-length commercial terms having same effect as, and not being unduly different from, those which would apply:
 - (i) if any relevant gas transporter entered into a contract with the NTS operator to provide and/or procure the same services (regardless of whether such contract exists or not); and
 - (ii) if the licensee and such NTS operator were in fact held in separate and unrelated legal entities.
2. 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 will instruct, direct and procure that the licensee shall:
 - (a) conduct its transportation business in a manner best calculated to secure that the business of the NTS operator, the licence for which is held by the holder of this licence in the same legal entity, does not obtain any unfair commercial advantage (including any such advantage from a preferential or discriminatory arrangement); and

(b) enter into and comply with written arrangements, which, if the business of such NTS operator was not held within the same legal entity, would be a contract on arm's-length commercial terms.

3. The licensee shall:

(a) deliver to the Authority evidence (including a copy of each such undertaking) that the licensee has complied with its obligation to procure undertakings pursuant to paragraph 2;

(b) inform the Authority immediately in writing if the directors of the licensee become aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached; and

(c) comply with any direction from the Authority to enforce any such undertaking;

and shall not, save with the consent in writing of the Authority, enter (directly or indirectly) into any agreement or arrangement with any ultimate controller of the licensee or any of the subsidiaries of any such corporate ultimate controller (other than the subsidiaries of the licensee) at a time when –

(i) an undertaking complying with paragraph 2 is not in place in relation to that ultimate controller; or

(ii) there is an unremedied breach of such undertaking; or

(iii) the licensee is in breach of the terms of any direction issued by the Authority under paragraph 3 of this condition.

4. In this condition, “relevant gas transporter” shall have the meaning given in Standard Special Condition A3 (Definitions and Interpretation) save that it shall exclude Transco plc both in its capacity as the licensee and in its capacity as NTS operator.

Appendix C

INFORMATION REGARDING DN SALES

Further information regarding DN Sales is contained in the following documents:

- 1.1 *140/05 Ofgem Open Letter – Gas Distribution Network Sales – Final consents to sale of four of National Grid Transco’s gas distribution networks – 26 May 2005;*
- 1.2 *Modifications to the gas transporters licences held by Transco plc, Blackwater 2 Limited, Blackwater F Limited, Blackwater G Limited and Blackwater SC A Limited – direction pursuant to section 23 of the Gas Act 1986 – 25 May 2005;*
- 1.3 *Direction relating to the proposed disposal by Transco of the entire issued share capital in four relevant wholly owned subsidiary companies to third party purchasers – 25 May 2005;*
- 1.4 *138/05 Gas Distribution Network Sales – Open Letter to National Grid Transco, Transco and the DN Companies requesting report relating to the Authority’s decision on conditions subsequent – 20 May 2005;*
- 1.5 *Transco’s hive down report – 29 April 2005;*
- 1.6 *Ofgem Open Letter – Gas distribution price controls and the treatment of I&C meters – 29 April 2005;*
- 1.7 *Ofgem Open Letter – Final approval for hive-down of National Grid Transco’s gas distribution networks – 29 April 2005;*
- 1.8 *Revocation Order – 29 April 2005;*
- 1.9 *Direction issued by the Gas and Electricity Markets Authority under licence condition 21 (Publication of Information to Customers) of the gas suppliers licence – 29 April 2004;*
- 1.10 *131/05 Direction under standard licence condition 21 (Publication of Information to Customers) of the gas suppliers licence: letter – 29 April 2004;*

- 1.11 *Gas Distribution Network Sales – Request for final written confirmation that the conditions precedent to the Authority’s conditional consent have been fully met – 28 April 2005;*
- 1.12 *National Grid Transco – Potential sale of gas distribution network businesses. Final Proposals for Interim Incentives and Formal consultation under section 23 of the Gas Act 1986 – April 2005;*
- 1.13 *Open Letter – Consent to NGT’s sale of four of its gas distribution networks – April 2005;*
- 1.14 *Urgent Modification Proposal 0745 – Modification of the Network Code into Transco plc’s individual (short form) network code – April 2005;*
- 1.15 *Consent to transfer four of the gas transporters licences held by Transco plc incorporating a direction pursuant to section 8AA of the Gas Act 1986 – April 2005;*
- 1.16 *Modification to two of the six gas transporters licences held by Transco plc – direction pursuant to section 23 of the Gas Act 1986 – April 2005;*
- 1.17 *National Grid Transco – Potential sale of gas distribution network businesses. Formal consultation under Section 23 and Section 8AA of the Gas Act 1986 - February 2005;*
- 1.18 *Notice of proposed consent to transfer the four Additional Licences relating to the IDN from Transco to four wholly owned Transco subsidiary companies published on 14 February 2005 pursuant to section 8AA of the Act – April 2005;*
- 1.19 *National Grid Transco – Sale of gas distribution networks. Authority Decision. Transco plc applications to dispose of four gas distribution networks;*
- 1.20 *Direction issued by the Authority on 1 February 2005 re modification of the price control conditions in each of Transco plc’s six gas transporter licences;*
- 1.21 *DN Sales: Open Letter to Transco regarding credit cover arrangements for gas transportation use of system and connection charges 17 December 2004;*
- 1.22 *Erratum to Final Impact Assessment 2 December 2004;*

- 1.23 *National Grid Transco– potential sale of gas DN business – Licensing: Next Steps – Formal consultation under section 23 and informal consultation under section 8AA of the Gas Act 1986 – November 2004;*
- 1.24 *National Grid Transco – Potential Sale of Gas distribution network businesses – Final Impact Assessment – November 2004;*
- 1.25 *National Grid Transco – Potential sale of gas distribution network businesses – Final Impact assessment – Appendices – November 2004;*
- 1.26 *Transco plc – Form of five new additional GT licences granted to Transco plc on 5 November 2004 – 5 November 2004;*
- 1.27 *Transco plc – Notice of the grant of five new additional gas transporter licences – 5 November 2004;*
- 1.28 *Joint Ofgem and DTI open letter – Sale of NGT’s Local Gas Distribution Networks (DNs): Issue of an exemption from a shipper’s licence – 4 November 2004;*
- 1.29 *DN Sales: Ofgem note on initial draft of private CLM licence condition – 19 October 2004;*
- 1.30 *Open letter: updated timetable for potential gas distribution network sales project – 15 October 2004 – 238/04;*
- 1.31 *DN Sales: Gas distribution price controls further clarification – 6 October 2004;*
- 1.32 *DN Sales: National Grid Transco – potential sale of gas distribution network businesses – publication of NGT’s initial drafting of proposed new NTS/DN GT licences – 15 September 2004;*
- 1.33 *National Grid Transco – potential sale of gas distribution network businesses; Initial thoughts on restructuring of Transco plc’s gas transporter licences; Consultation document. September 2004 – 215/04;*
- 1.34 *Open letter on Special Condition 18 – 26 August 2004;*

- 1.35 *Ofgem preliminary position on business separation requirements to apply between distribution networks – 20 August 2004;*
- 1.36 *Offtake arrangements, conclusions document on framework – 13 August 2004 – 199/04;*
- 1.37 *Interruptions arrangements: conclusions on document framework – 13 August 2004 – 198/04;*
- 1.38 *DN Sales: open letter to NGT, potential DN purchasers and other parties on licence amendment process – 5 August 2004;*
- 1.39 *DN Sales: Ofgem position paper on pensions – 2 August 2004;*
- 1.40 *DN Sales: Open letter on environmental liabilities – 23 July 2004;*
- 1.41 *Transco plc – Notice of proposed grant and proposed modification of 8 new additional gas transporters licences – 22 July 2004;*
- 1.42 *Open letter: timetable for potential gas distribution network sales project – 16 July 2004;*
- 1.43 *National Grid Transco – potential sale of gas distribution network businesses. Interruptions arrangements: regulatory impact assessment. 30 June 2004 - 146/04;*
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- 1.45 *National Grid Transco – potential sale of network distribution businesses Agency and governance arrangements – 28 May 2004 120/04;*
- 1.46 *National Grid Transco – potential sale of network distribution businesses. Allocation of roles and responsibilities between transmission and distribution network – 28 May 2004 – 119/04s;*
- 1.47 *DN Sales: RIA on options for exit reform industry letter – 20 May 2004;*
- 1.48 *National Grid Transco – potential sale of network distribution businesses. Allocation of roles and responsibilities between transmission and distribution networks – regulatory impact assessment. 20 April 2004 – 84/04;*

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- 1.50 *Open letter on Gas Distribution Price Controls – 16 March 2004;*
- 1.51 *National Grid Transco – potential sale of network distribution businesses: next steps. 17 December 2003 – 170/03; and*
- 1.52 *National Grid Transco – potential sale of network distribution businesses. 31 July 2003 – 77/03.*

Copies of the above documents are available (free of charge) from the Ofgem Research and Information Centre (telephone 020 7901 7003) or on the Ofgem website (www.ofgem.gov.uk).