

**Information release under Gas Transporters
Licence Standard Special Condition A7**

Guidance Document

June 2005

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1. Introduction and background

- 1.1 This guidance is issued to assist relevant gas transporter (GT) licensees¹ and other market participants in better understanding how the Gas and Electricity Markets Authority (the Authority) will consider, and information it would likely take into account in considering, any current or future network code² modification proposals that seek to release information to the market. Whilst the Authority intends to follow this guidance when taking decisions on relevant modification proposals, they are not legally binding on the Authority.

Background

- 1.2 In February 2005, Ofgem³ issued its initial consultation and draft impact assessment (the February document)⁴ consulting on three options in respect of enduring regulatory arrangements to facilitate information disclosure to the market. These options were as follows:
- ◆ Option One: No change – retain the requirements of Standard Special Condition A7;⁵
 - ◆ Option Two: Introduce a formal “derogation” power – introduce a power for the Authority to grant relevant GT licensees a derogation from having to comply with some or all of the information disclosure requirements; and
 - ◆ Option Three: Licence modification – modify the GT licence to prescribe the information that relevant GT licensees would be obliged to release to the market if required to do so by the network code.

¹ In this document relevant GT licensees refers to Transco NTS, Transco RDN, Southern Gas Networks Ltd., Northern Gas Networks Ltd., Wales and West Utilities Ltd., Scotland Gas Networks Ltd.. For clarification, references to relevant GT licensees in this document do not include IGTs.

² As per paragraph 5 of Standard Special Condition A11 of the relevant GT licences, references to a network code shall include the uniform network code (as may be varied from time to time) unless otherwise stated.

³ Ofgem is the office of the Authority. The terms ‘Ofgem’ and the ‘Authority’ are used interchangeably in this document.

⁴ ‘Offshore gas production information disclosure: initial consultation and draft impact assessment’, Ofgem, February 2005.

⁵ Standard Special Condition A7 is discussed further in chapter 2 and included in full in Appendix Seven. Information release under Gas Transporters Licence Standard Special Condition A7

- 1.3 Following careful consideration of the issues and the responses received to the February document, the Authority decided to retain the existing regulatory arrangements (i.e. Option One of the February document).⁶ This decision also means that the temporary informal derogation in respect of SSC A7 of Transco NTS's GT licence was removed effective of 27 June 2005.

Purpose of this guidance

- 1.4 In the February document Ofgem made clear that, should the Authority decide to adopt Option One, Ofgem would provide further guidance on the treatment of potentially confidential and/or commercially sensitive information. That guidance is set out in this document.
- 1.5 This guidance is being issued to provide relevant GT licensees and other market participants:
- ◆ further clarity in respect of how the Authority intends to consider decisions on relevant network code modification proposals, building on and replacing previously issued guidance;⁷ and
 - ◆ further comfort that commercial sensitivities and issues of confidentiality will be considered by the Authority as part of its decision making process with respect to any network code or Uniform Network Code (UNC) modification proposals.

Legal status of the guidance

- 1.6 By their very nature these guidance notes do not form part of any relevant licensee's GT licence, the UNC or any network code. Further they are not intended to be exhaustive of all the matters which the Authority may wish to have regard to in a particular case. Whilst these guidance notes are not legally binding on the Authority, as the Authority cannot fetter its discretion as to any decision it may take in relation to a particular modification proposal, these guidance notes do however highlight issues that the Authority may wish to have

⁶ Offshore gas production information disclosure: Decision letter, Ofgem, 27 June 2005.

⁷ Ofgem provided guidance in 'Transco price control and NTS SO incentives 2003-2007: Explanatory notes to accompany the section 23 notice of proposed modifications to Transco's Gas Transporter Licence',

particular regard to when considering network code modification proposals related to the disclosure of information by the relevant GT licensee. Further, the Authority proposes to follow this guidance and, where it departs from them, to give its reasons for doing so.

Revision of the guidance

1.7 This guidance enters into force on its publication, at the same time as the temporary informal derogation is removed in respect of SSC A7 of Transco NTS's GT licence. The Authority proposes to follow these guidance notes from now on.

1.8 Ofgem would welcome any suggestions to further clarify and/or enhance this guidance in the period following its publication. Any such suggestions should be sent to Ofgem by 19 September 2005 addressed to:

Sonia Brown

Director, Markets

Office of Gas and Electricity Markets

9 Millbank

London

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1.9 Electronic responses should be sent to wholesale.markets@ofgem.gov.uk.

1.10 This guidance will be kept under review and may be updated from time to time based upon practical experience. A relevant GT licensee or third party, as well as Ofgem, can propose changes to this guidance. When a modification is proposed to this guidance, Ofgem will consult licensees and other interested parties. Ofgem intends for any such consultation to follow best practice consultation guidelines.

1.11 If you wish to discuss any part of this document the following people will be pleased to help:

- Jo Witters (telephone 020 7901 7159) or
- Olaf Islei (telephone 020 7901 7374)

2. Regulatory Framework and Modification

Process

- 2.1 This chapter provides a summary of the relevant regulatory framework governing the gas market in Great Britain (GB) with respect to the provision of information and the process undertaken with respect to modifications to network codes.

Regulatory Framework

Gas Act

- 2.2 The Gas Act 1986 (the Gas Act), as amended by the Utilities Act 2000 (the Utilities Act) and the Energy Act 2004 (the Energy Act), provides for the regulation of the onshore gas regime in GB and for the separate licensing of gas transporters, gas shippers and gas suppliers.

Section 4AA

- 2.3 Section 4AA of the Gas Act sets out the principal objective of the Authority, which is to protect the interests of consumers through the promotion of effective competition. Section 4AA also sets out the general duties of the Authority in respect of gas. These are set out in detail in Appendix 3.
- 2.4 Section 4AA of the Gas Act has recently been amended by the Energy Act to require that the Authority (and the Secretary of State) should carry out its functions having had regard to “the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed” and any other principles appearing to represent best regulatory practice.

Section 35

- 2.5 Section 358 of the Gas Act relates to the publication of advice and information about consumer matters. Under section 35 of the Gas Act the Authority can

⁸ Section 35 of the Gas Act is set out in full in Appendix Four.
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publish information in such manner as it thinks fit provided that it appears to the Authority that publication would "promote the interests of consumers in relation to gas conveyed through pipes". In publishing such information the Authority shall have regard to the need for excluding, so far as practicable, any matter relating to the affairs of a particular individual or body of persons where publication would or might, in the opinion of the Authority, "seriously and prejudicially affect the interests" of that individual or body. Before publishing, the Authority must consult the relevant parties.

Utilities Act

- 2.6 Section 1 of the Utilities Act created the Authority.
- 2.7 The Utilities Act amended the Gas Act in a number of significant ways. The Utilities Act gave the Authority a new principal objective and general duties (as set out in Appendix Three) and functions in relation to licensing and setting performance standards. The Utilities Act also gave the Authority the power to impose financial penalties on companies found to be breaching, or to have been in breach of, licences issued to them under the Gas Act.
- 2.8 Section 105 of the Utilities Act⁹ sets out general restrictions on the disclosure of information. These restrictions apply to information obtained by a person under or by virtue of, among other things, the Gas Act and where that information relates to the affairs of any individual or to any particular business. It is considered that this restriction is capable of applying not only to Ofgem, but also to relevant GT licensees and other market participants.
- 2.9 Broadly, section 105 provides that such a person is prohibited from disclosing the relevant information, except through certain gateways (for example where consent of the relevant party to disclose is given and, in relation to a licensee, where disclosure is required to be made by a condition of its licence). Disclosure in breach of the prohibition is a criminal offence.

⁹ Section 105 of the Utilities Act is set out in Appendix Five.
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Energy Act

- 2.10 The Energy Act introduced a requirement that, subject to its principal objective and its general duties, the Authority (and the Secretary of State) should, amongst other things, carry out its functions in a manner best calculated to contribute to the achievement of sustainable development.
- 2.11 Sections 173 to 177 and Schedule 22 to the Energy Act provide for a right of appeal to the Competition Commission (CC) against decisions by the Authority on modifications to certain industry codes. It is considered that when the rights of appeal come into effect, this will increase regulatory accountability for these decisions. Further information with respect to the appeals process can be found in guidance produced by the CC.¹⁰

Sustainable Energy Act

- 2.12 Section 6 of the Sustainable Energy Act 2003 (the Sustainable Energy Act) amends the Utilities Act by inserting into it section 5A. Section 5A places a duty on the Authority to carry out Impact Assessments (IAs).¹¹ In all cases where the Authority is proposing to undertake an action for the purposes of, or in connection with, the carrying out of its functions under Part I of the Gas Act and it appears to the Authority that the proposal is “important”, the Authority must carry out and publish an IA, or publish a statement setting out the reasons why it considers that it is unnecessary for it to carry out an IA. Moreover, Ofgem is required to take into account any responses to the IA before finalising its proposal. Ofgem has published guidance on IAs.¹²

Competition Act and Enterprise Act

- 2.13 The Competition Act 1998 (the Competition Act) introduced two prohibitions against anti-competitive behaviour. The Chapter I prohibition prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade within the United Kingdom (UK) and

¹⁰ At the time of writing the proposed CC guidance notes in respect of the appeals process were under consultation. Details of this consultation can be found at: www.competition-commission.gov.uk/rep_pub/consultations/current/index.htm

¹¹ Section 5A of the Utilities Act is set out on Appendix Six.

have as their object or effect the prevention, restriction or distortion of competition in the UK. The Chapter II prohibition prohibits any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position if it may affect trade within the UK. Undertakings can be fined up to 10% of the undertaking's worldwide turnover for a breach of the Chapter I and Chapter II prohibitions.

- 2.14 The Enterprise Act 2002 (the Enterprise Act) contains provision for market investigation references to the Competition Commission (CC) to be made by the Office of Fair Trading (OFT). The Authority (along with other specified sectoral regulators) has concurrent power with the OFT to make such references to the CC in respect of the gas and electricity markets if it has reasonable grounds for suspecting that any feature or combination of features of a market prevents, restricts or distorts competition in connection with the supply or acquisition of goods or services in the UK or part of the UK. Having received a reference, the CC is able to carry out an investigation to inquire into markets where it appears that the structure of the market or the conduct of suppliers or customers is harming competition. The Authority is able to accept undertakings in lieu of a reference to the CC (publishing its reasons for doing so).

Financial Services and Markets Act

- 2.15 The Financial Services and Markets Act 2000 (FSMA) gave statutory powers to the Financial Services Authority (FSA), an independent non-governmental body, established to regulate financial services and protect consumers. Among other things, the FSMA introduced a new financial penalties regime to address market abuse (as defined under that Act).
- 2.16 The regime relating to market abuse applies to the behaviour of all legal persons in relation to qualifying investments traded on 'prescribed markets', regardless of whether they require FSA authorisation. FSMA contains a regime for dealing with market abuse that may extend to markets such as the OCM¹³ and trading upon such markets. The penalties for market abuse range from fines to censure. Individuals and companies are subject to the regime.

¹² 'Guidance on impact assessments - Revised guidance', Ofgem, June 2005.

¹³ On-the-day commodity market – a within day gas trading market operated by APX Gas Ltd. Information release under Gas Transporters Licence Standard Special Condition A7
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- 2.17 The Financial Services and Markets Act 2000 (Exemption) Order 2001 provides for certain persons, including parties within the gas industry, to be exempt from the general prohibition which is imposed by section 19 of FSMA, which requires persons to be authorised to carry out regulated activities, which are specified by the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

Licensing regime

- 2.18 As a result of National Grid Transco's (NGT) sale of four of its gas Distribution Networks (DNs)¹⁴ there are now six relevant GT licences,¹⁵ comprising of the four independent gas distribution network (IDN) licences,¹⁶ Transco's retained distribution network (RDN) licence and Transco's National Transmission System (NTS) licence.
- 2.19 As a result of these changes, the GT licence obligation with respect to the release of information to the market which previously referred to Transco now relates to the six relevant GT licences. This licence condition, and Standard Special Condition A11, which relates to the requirement on GT licensees to establish transportation arrangements, including the preparation of a uniform network code are discussed further below.

Standard Special Condition A7

- 2.20 Standard Special Condition A7 (SSC A7) of each relevant GT licence includes, amongst other things, an obligation to comply with any network code obligation to provide relevant information to the market (paragraph 5).¹⁷ This paragraph was introduced into this licence condition in April 2002¹⁸ and requires that the licensee shall comply with any obligation in the network code to disclose information relating to:

- (i) the operation of the licensee's pipe-line system, or

¹⁴ The completion of the sales took place on 1 June 2005, when the IDN licences were transferred to the new owners.

¹⁵ This does not include any independent GTs.

¹⁶ The four IDN licensees are Southern Gas Networks Ltd., Northern Gas Networks Ltd., Wales and West Utilities Ltd., Scotland Gas Networks Ltd..

¹⁷ The complete text of Standard Special Condition A7 is provided in Appendix Seven

¹⁸ Prior to the section 8AA and section 23 modifications taking effect on 1 May 2005, this condition existed as standard condition 4E in Transco's GT licence.

- (ii) any market relating to the licensee's pipe-line system.

- 2.21 The licence condition therefore requires the relevant GT to comply with network code obligations relating to the disclosure of a potentially wide range of information.
- 2.22 Paragraph 5 was introduced because in its absence the general restrictions on the disclosure of information in relation to the duties of licensed gas transporters under section 105 of the Utilities Act may have prevented the release of information.¹⁹ However, as discussed above, section 105 provides for the release of information to the market where it has a licence requirement to do so. On this basis, a specific licence condition was necessary to ensure the release of appropriate and relevant information to the wider market.
- 2.23 For the purpose of clarity, as per paragraph 5 of SSC A11, the requirements of SSC A7 relate to any modifications to either a network code or the uniform network code that seek to release information to the market by the relevant GT licensee.

Standard Special Condition A11

- 2.24 Under Standard Special Condition A11 (SSC A11)²⁰ of the NTS Licence, the RDN Licence and the IDN Licences, the licensees (relevant GTs) are required to establish transportation arrangements which are calculated to facilitate the achievement of a number of objectives (the "relevant objectives"), which in summary relate to among other things:
- ◆ the efficient and economic operation of its pipeline system;
 - ◆ the co-ordinated, efficient and economic operation of the combined pipeline system;
 - ◆ the efficient discharge of licence obligations; and

¹⁹ In its document "Transco price control and NTS SO incentives 2002-7: Explanatory notes to accompany the section 23 notice of proposed modifications to Transco's Gas Transporter Licence", Ofgem, April 2002" Ofgem described information that it considers could be considered as falling under the scope of the licence for release by the relevant GT licensee to the wider market. This information is listed in Appendix Nine. Please note that the list contained in Appendix Nine is intended for providing an illustrative example only. It is not intended to represent any actual or potential modification proposal that may be raised for

- ◆ the securing of effective competition between relevant shippers and relevant suppliers and DN operators.
- 2.25 SSC A11 requires relevant GTs²¹ to prepare and furnish the Authority with a copy of a network code setting out the terms of its transportation arrangements as well as procedures for the modification of its network code.²²
- 2.26 In addition, there is a requirement in SSC A11 for relevant GTs to together prepare and furnish the Authority with a uniform network code (UNC) which sets out the terms of the transportation arrangements and modification procedures to the extent that such terms are common (or not in conflict) between these relevant gas transporters, unless the Authority agrees otherwise.²³
- 2.27 At present, all transportation arrangements and modification procedures are set out in the UNC. Each individual GT's network code takes the form of a "short form" network code which simply incorporates the UNC by reference.

Modifications process

Introduction

- 2.28 As discussed above, SSC A11 provides a requirement on the relevant GT licensees to define and operate a mechanism for the modification of their network code and the UNC. The network code modification procedures (as defined in paragraph 7 of SSC A11) are required to provide for a mechanism by which the UNC, and each of the network codes prepared by or on behalf of each relevant GT, may be modified so as to better facilitate the achievement of the relevant objectives. The decision on whether or not a modification proposal should be implemented is made by the Authority (with respect to both network code and UNC decisions).^{24, 25}

consideration by the Authority. This list is also not intended to be exhaustive.

²⁰ The complete text of Standard Special Condition A11 is provided in Appendix Eight.

²¹ Transco has consent from the Authority under SSC A11 to prepare one network code in relation to both its NTS and RDN businesses.

²² Standard Special Condition A11, paragraph 4.

²³ Standard Special Condition A11, paragraph 6.

²⁴ The process outlined in this chapter relates to non-urgent modification proposals. Whilst the issues that the Authority will take into account when considering urgent modification proposals will be the same, the process itself may not follow the procedure outlined below.

Proposal of modifications

Network codes

- 2.29 In respect of each network code prepared by or on behalf of the relevant GT licensee, a modification proposal may be raised by the licensee (to the extent that the modification proposal relates to the pipeline system to which its licence relates), any relevant shipper or third party participant identified in the network code modification procedure as being entitled to propose a modification, and a DN operator with whom the licensee has entered into transportation arrangements in respect of the pipe-line system to which the relevant licence relates.

Uniform network code

- 2.30 In respect of the UNC a modification proposal may be raised by a relevant GT, any shipper or third party participant identified in the network code modification procedures as being entitled to propose a modification.

Final Modification Report

- 2.31 Following consultation and industry consideration of a modification proposal a final modification report (FMR) is prepared via the Joint Office²⁶ process for the Authority. This report is required to detail the particulars of the proposal, the particulars of any alternative proposal and the particulars of any representations by any person with respect to those proposals. Further, the report should provide a recommendation from the Panel²⁷ as to whether any proposed modification should or should not be made, providing details of those factors taken into consideration when making that recommendation and provide such further information as may be required to be given to the Authority by the network code modification procedures.

²⁵ Appendix One contains a diagram which summarises the process detailed in the following sections.

²⁶ The Joint Office is responsible for administering the modifications process. Subject Matter Experts are nominated by GTs and shippers to undertake drafting of modification reports.

²⁷ The Panel consists of five GT and five shipper representatives, plus a non-voting Joint Office chair.

Impact Assessments

- 2.32 When Ofgem receives the FMR, and all representations made, to take the final modification decision, it will need to consider whether it is required to undertake an IA with respect to the modification proposal.^{28, 29}
- 2.33 As noted above, the Authority is required to carry out an IA where it is proposing to undertake an action for the purposes of, or in connection with, the carrying out of its functions under Part I of the Gas Act and it appears to the Authority that the proposal is “important”.³⁰ This also therefore relates to the Authority’s consideration of modification proposals. If the Authority considers an IA is required, it will issue an IA for consultation, and will take into account the responses received to that consultation when assessing whether the modification proposal should be implemented.

The Authority’s decision

- 2.34 Having considered all relevant factors and responses received, the Authority will then publish its final decision in respect of whether or not to direct the implementation of the modification proposal.

Right to appeal

- 2.35 As discussed above, once the Authority has published its decision in respect of a network code modification proposal, if any relevant party considers that the Authority has reached the wrong decision they will have the right to appeal within the required 15 working days after the final modification decision has been made to the CC, as set out in sections 173 to 177 of the Energy Act 2004.

²⁸ As per section 5A of the Utilities Act.

²⁹ A decision to carry out an impact assessment in respect of that modification proposal may have been taken earlier in the process (and/or an impact assessment may have already been carried out at an earlier stage). Notwithstanding any earlier decisions taken in respect of whether an IA will or will not be undertaken regarding that proposal, Ofgem will assess this decision at the point it receives the FMR in respect of that proposal.

³⁰ As detailed in section 5A of the Utilities Act (as amended by the Sustainable Energy Act), these requirements do not apply if it appears to the Authority that the urgency of the matter makes it impracticable or inappropriate for the Authority to comply with the requirements of that section.

Implementation of modification

- 2.36 Where the Authority has chosen to direct the implementation of the relevant modification proposal and where no appeal has been made or where an appeal has been made but was unsuccessful the modification will be implemented in accordance with the specified timetable.

3. Guidance on information release

The purpose of this guidance

- 3.1 This guidance has been issued to provide relevant GT licensees and other market participants:
- ◆ further clarity in respect of how the Authority intends to consider decisions on relevant network code modification proposals, building on and replacing previously issued guidance; and
 - ◆ further comfort that commercial sensitivities and issues of confidentiality will be considered by the Authority as part of its decision making process with respect to any network code or Uniform Network Code (UNC) modification proposals.

Legal status of the guidance

- 3.2 By their very nature these guidance notes do not form part of any relevant licensee's GT licence, the UNC or any network code. Further they are not intended to be exhaustive of all the matters which the Authority may wish to have regard to in a particular case. Whilst these guidance notes are not legally binding on the Authority as the Authority cannot fetter its discretion as to any decision it may take in relation to a particular modification proposal, these guidance notes do however highlight issues that the Authority may wish to have particular regard to when considering network code modification proposals related to the disclosure of information by the relevant GT licensee. Further, the Authority proposes to follow this guidance and, where it departs from them, to give its reasons for doing so.

Revision of the guidance

- 3.3 This guidance will be kept under review and may be updated from time to time based upon practical experience. A relevant GT licensee or third party, as well as Ofgem, can propose changes to this guidance. When a modification is proposed to this guidance, Ofgem will consult licensees and other interested

parties. Ofgem intends for any such consultation to follow best practice consultation guidelines.

Time from which this guidance apply

- 3.4 This guidance enters into force on its publication, at the same time as the temporary informal derogation is removed.

Guidance

- 3.5 As discussed in the previous chapter, SSC A11 provides a requirement on the relevant GT licensees to define and operate a mechanism for the modification of their network code and the UNC. The network code modification procedures (as defined in paragraph 7 of SSC A11) are required to provide for a mechanism by which the UNC; and each of the network codes prepared by or on behalf of each relevant GT, may be modified so as to better facilitate the achievement of the relevant objectives.
- 3.6 The decision on whether or not a modification proposal should be implemented is made by the Authority (with respect to both network code and UNC decisions). This chapter outlines the process the Authority is intending to follow and the matters which the Authority may wish to have particular regard to when considering proposals to modify network codes or the UNC which seek to require the relevant GT licensee to release information to the wider market.^{31,32}
- 3.7 For the purpose of clarity, while the Authority will follow what is broadly the same process for considering all modification proposals across all industry code documents, the guidance in this document and the process detailed in this chapter relates to the consideration of modification proposals raised under the UNC or a network code that seek for the relevant GT licensee to release information, which if implemented, the relevant GT licensee would be required to release under paragraph 5 of SSC A7.

³¹ The process outlined in this chapter relates to non-urgent modification proposals. Whilst the issues that the Authority will take into account when considering urgent modification proposals will be the same, the process itself may not follow the procedure outlined below.

³² Appendix Two contains a diagram which summarises the process detailed in this chapter. Information release under Gas Transporters Licence Standard Special Condition A7

Consideration of proposed modification

- 3.8 When taking a decision in respect of modification proposals, the Authority will need to carefully consider the relevant modification reports, all representations received to consultation on those reports and also responses received to any IA. This will also include consideration of any representation made to Ofgem by the Department of Trade and Industry (DTI), in its role as upstream licensing regulator, and those parties with offshore production interests to the extent that the modification proposal relates to the disclosure of offshore information.
- 3.9 In carrying out its consideration of any modification proposal the Authority needs to be satisfied that the modification proposal better facilitates the achievement of the relevant network code objectives, as set out in paragraph one of SSC A11 of the relevant GT licence.
- 3.10 If the Authority is satisfied that the proposal does better facilitate the achievement of the relevant objectives, the Authority then needs to consider whether the proposal is consistent with the Authority's principal objective and general duties.
- 3.11 Any modification proposal, including any proposals seeking for the relevant GT licensee to release information (as per SSC A7) would be considered in this manner. The following sections provide more detail in respect of the factors the Authority would likely consider when assessing any modification proposal intending for information to be released under a network code or the UNC.

Consideration of confidentiality and commercial sensitivity

- 3.12 As with any potential or future modification proposal, while Ofgem can provide its initial views on the policy approach of a proposal, Ofgem cannot fetter the discretion of the Authority in respect of whether it would be likely to direct the implementation of any modification proposal.
- 3.13 However, when considering whether a modification proposal requiring the disclosure of information by the GT better facilitates the relevant objectives and is consistent with its wider statutory duties, Ofgem will consider both the benefits which increased market transparency may bring and also any issues raised relating to potential commercial sensitivity or confidentiality in relation to

the disclosure of such information. The Authority notes that although commercial sensitivity and confidentiality are separate issues, in many cases, parties will consider that the information is both commercially sensitive and confidential.

- 3.14 Ofgem notes that where Ofgem itself proposes to publish information under section 35 of the Gas Act 'Publication of advice and information about consumer matters' (Section 35) it needs to carry out a similar assessment of these often competing interests.
- 3.15 Section 35 provides for the Authority to publish any advice and information where, if it appears to the Authority, that such publication would promote the interests of consumers in relation to gas conveyed through pipes. In publishing, the Authority is required to have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons where publication of that matter would or might in the Authority's opinion, seriously and prejudicially affect their interests. Before publishing, the Authority must consult the relevant individual or body.
- 3.16 Ofgem considers where a modification proposal is seeking for the relevant GT licensee to release information to the market, it is appropriate for an assessment similar to that it carries out when exercising its functions under Section 35, to be carried out when considering that proposal.
- 3.17 That is, where the Authority is considering a particular network code modification proposal, the Authority will also have regard to whether the information, if disclosed, would also promote the interests of consumers.
- 3.18 It will also consider the extent to which the disclosure of that information would or might, in its opinion, consistent with its Section 35 assessment, seriously and prejudicially affect the relevant parties' interests, either because the information is commercially sensitive and/or the information is confidential.
- 3.19 The Authority will base its considerations on, in particular, the representations provided to it as part of the modification report consultation process, in respect of any impact assessment undertaken regarding that proposal, or where the Authority has sought views on the issues of commercial sensitivity or confidentiality. Ofgem considers that the onus is on that party to make such

representations to it as it is best placed to understand and substantiate any potential prejudice.

- 3.20 The next sections provide more detail in respect of the factors that the Authority will seek to consider in carrying out this assessment.

Confidentiality and Liability

- 3.21 As noted previously, Ofgem considers that it is appropriate for relevant parties to demonstrate to Ofgem that the information that is to be released is confidential and whether they may have any liability issues relating to the release of that information. Such information could include information provided by network code parties in order to comply with their network code obligations or information that is provided to relevant GT licensees confidentially by non-network code parties via, for example, bi-lateral agreements.
- 3.22 In situations where the relevant parties consider that the information to be released is confidential Ofgem would expect relevant parties to demonstrate such confidentiality concerns by, for example, providing copies to Ofgem of the contracts that contain the relevant confidentiality provisions.
- 3.23 Ofgem would then consider the extent to which such information was covered by appropriate confidentiality provisions and would take such confidentiality provisions into account when considering whether or not to approve the implementation of the modification proposal. For example, whilst Ofgem considers there are benefits to the market of greater information transparency, Ofgem does not consider that requiring the disclosure of information provided to relevant GTs on a confidential basis and/or by non-network code parties would necessarily better facilitate the achievement of the relevant objectives of a network code. This is particularly the case if such a proposal threatened the continued provision of such information to Transco NTS and/or if it required Transco NTS to breach pre-existing confidentiality obligations in relation to such information.
- 3.24 Ofgem would also expect the relevant parties to consider ways in which their concerns regarding confidential could be mitigated. This could, for example, be through the signing of waivers with respect to the relevant contractual provisions.

Commercial Sensitivity

- 3.25 As with relevant parties concerns regarding confidentiality, Ofgem considers that it is appropriate for relevant parties to demonstrate to Ofgem that the information to be released is commercially sensitive.
- 3.26 When considering the extent to which information is considered by relevant parties to be commercially sensitive the Authority will seek to consider the relevant information with respect to the three following dimensions of data granularity that it considers are particularly relevant. In addition to the three dimensions illustrated in Figure 3.1 to Figure 3.3, the Authority will also seek to consider the extent to which price information is to be released under the proposal.

Figure 3.1 Dimensions of information: period of aggregation



- 3.27 Figure 3.1 describes the time period over which the data intended for release to the market has been aggregated. For example, at one extreme the period of time over which the information that is being released has been aggregated will be close to zero, resembling a real time data stream. At the other extreme the data will have been aggregated over longer time periods, such as annual gas consumption for Great Britain.

Figure 3.2 Dimensions of information: zone of aggregation



- 3.28 Figure 3.2 describes the 'geographic' or 'market specific' detail contained in the data intended for release. For example, a high level of granularity would represent the release of company specific information (which may be at the field

level), while a low level of granularity would represent the release of information that has been aggregated on a national or even international level.

Figure 3.3 Dimensions of information: time lag



3.29 Figure 3.3 describes the time lag associated with the release of the relevant data. At one extreme the data could be ex-ante, in the sense that it provides details of planned industry or company infrastructure investment. At the other extreme the data may be released with a lag of one year or more after the event it describes has occurred. For example, this may be UKCS production data released with a one year lag.

3.30 In carrying out its assessment of relevant modification proposals, Ofgem considers that the extent to which the information intended for release in that proposal is likely to be commercially sensitive will depend on elements of, or a combination of, the factors identified in Figure 3.1 to Figure 3.3 in addition to any information with respect to price.

3.31 Ofgem will then consider whether the release of that information would have a serious and prejudicial affect on parties' interests. To the extent that such concerns relating to a serious and prejudicial affect on parties' interests were not demonstrated by parties, then Ofgem does not consider that claims of commercial sensitivity should be a legitimate factor to prevent the possible approval of a network code modification proposal.

3.32 While the above factors would need to be considered on a case by case basis in respect of the information relating to the specific modification proposal, the Authority would, for example, be unlikely to direct the implementation of a modification proposal that sought to release ex-ante company specific information to the market. Ofgem considers highly specific information of this nature would be likely to, in its opinion, seriously and prejudicially affect the interests of the relevant company. Also, any modification proposal seeking to require the release of ex-ante price information specific to individual contracts

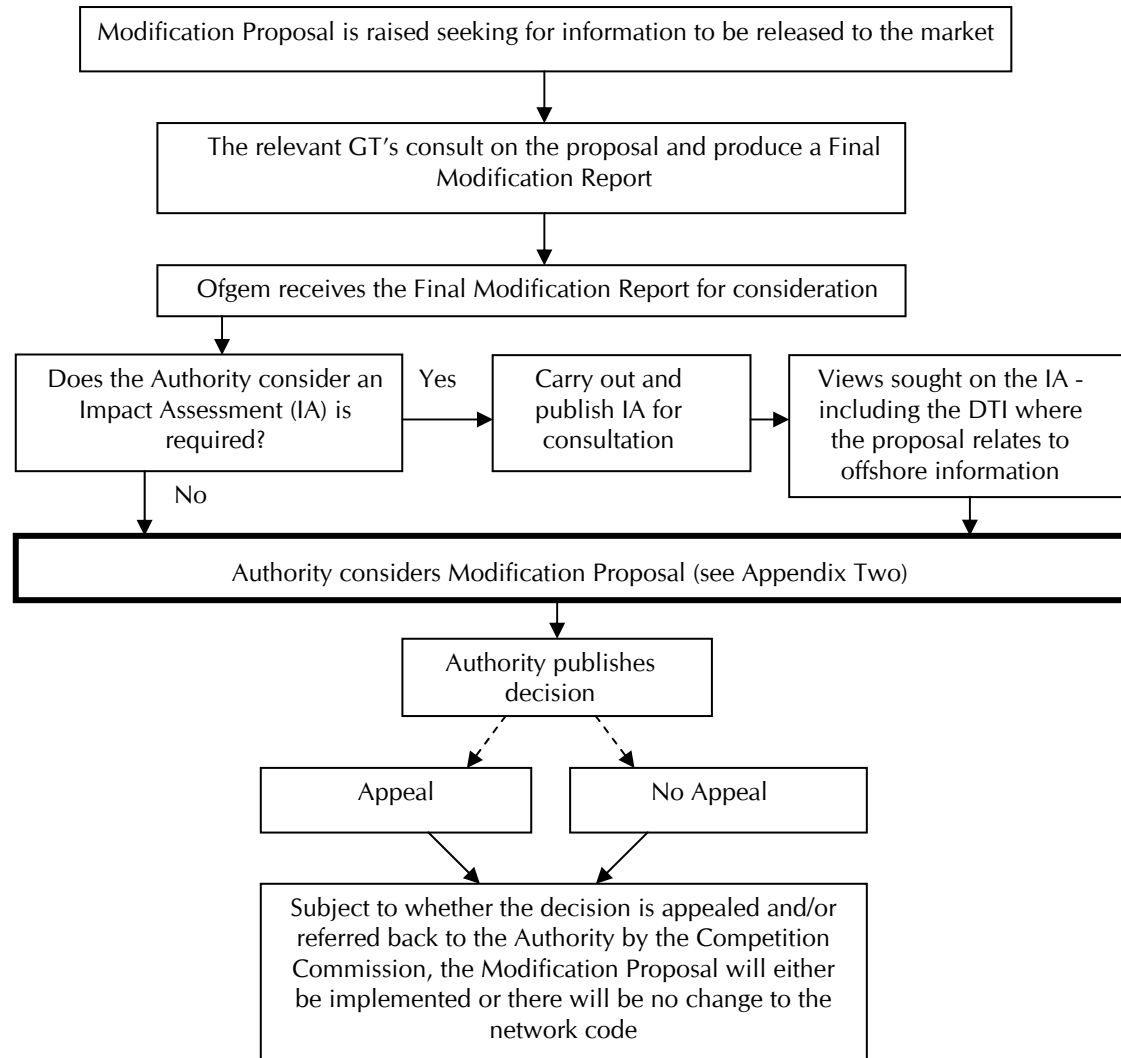
would also not likely better facilitate achievement of the relevant network code objectives and would therefore be unlikely to be approved by the Authority.

- 3.33 However, as noted earlier, Ofgem considers that it is, of course, for market participants to develop the details of the information to be released in modification proposals as they consider to be appropriate, including the timing of its release.

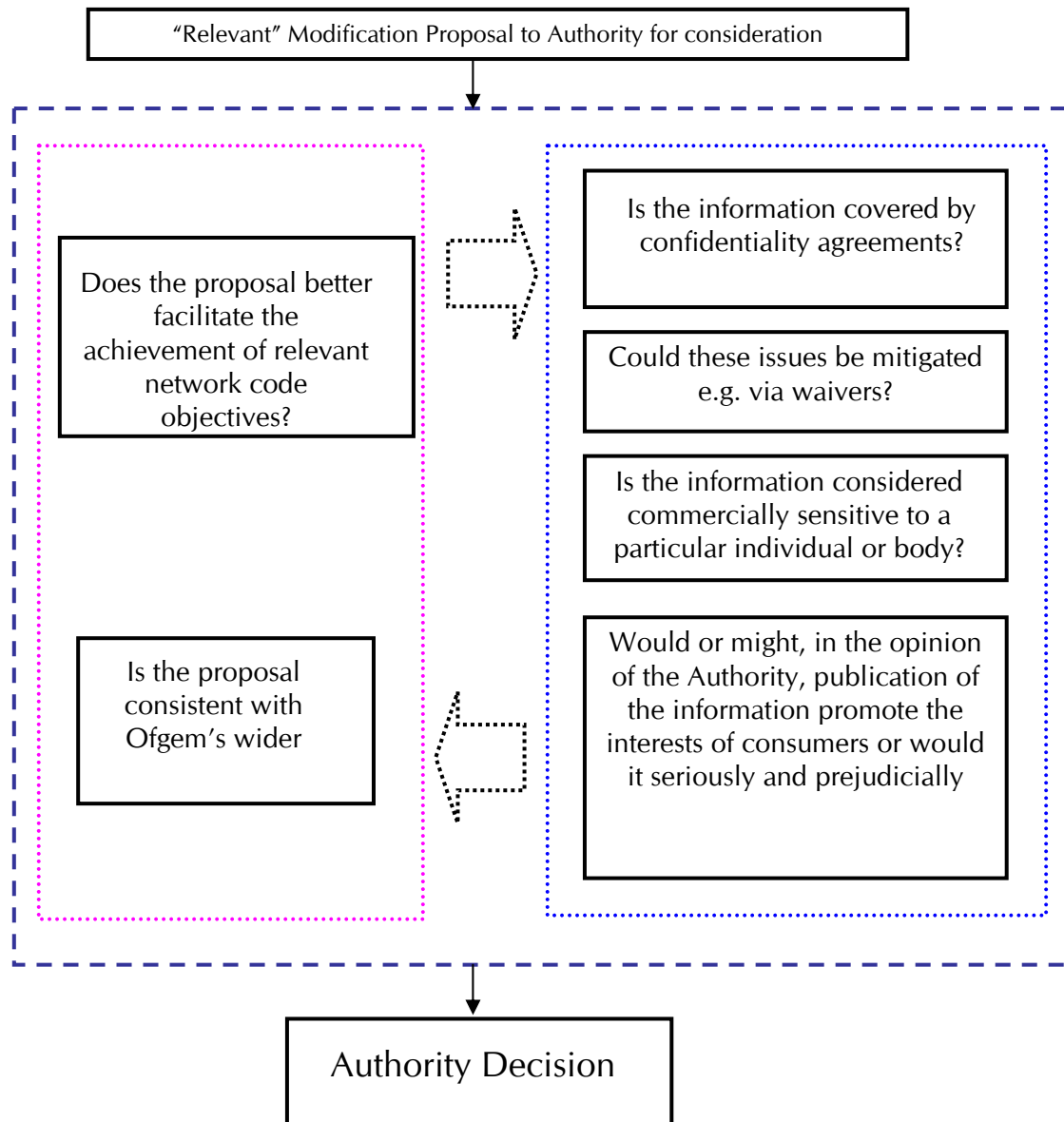
The Authority's decision

- 3.34 Having considered all relevant factors and responses received by way of the decision making process outlined above, the Authority will then publish its final decision in respect of whether or not to direct the implementation of the modification proposal.

Appendix 1 The Modifications Process



Appendix 2 The Authority's decision making process



Appendix 3 Section 4AA of the Gas Act

- (1) The principal objective of the Secretary of State and the Gas and Electricity Markets Authority (in this act referred to as “the Authority”) in carrying out their respective functions under this Part is to protect the interests of consumers in relation to gas conveyed through pipes, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas so conveyed.
- (2) The Secretary of State and the Authority shall carry out those functions in the manner which he or it considers is best calculated to further the principal objective, having regard to:
 - (a) the need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met; and
 - (b) the need to secure that licence holders are able to finance the activities which are the subject of obligations imposed by or under this Part or the Utilities Act 2000.
- (3) In performing that duty, the Secretary of State or the Authority shall have regard to the interests of-
 - (a) individuals who are disabled or chronically sick;
 - (b) individuals of pensionable age;
 - (c) individuals with low incomes; and
 - (d) individuals residing in rural areas;

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.
- (4) The Secretary of State and the Authority may, in carrying out any function under this Part, have regard to-
 - (a) the interests of consumers in relation to electricity conveyed by distribution systems (within the meaning of the Electricity Act 1989); and

- (b) any interests of consumers in relation to-
 - (i) telecommunication services and telecommunications apparatus (within the meaning of the Telecommunications Act 1984); or
 - (ii) water services or sewerage services (within the meaning of the Water Industry Act 1991),

which are affected by the carrying out of that function.

- (5) Subject to subsection (2), the Secretary of State and the Authority shall carry out their respective functions under this Part in the manner which he or it considers is best calculated-

- (a) to promote efficiency and economy on the part of persons authorised by licences or exemptions to carry on any activity, and the efficient use of gas conveyed through pipes;
- (b) to protect the public from dangers arising from the conveyance of gas through pipes or from the use of gas conveyed through pipes; and
- (c) to secure a diverse and viable long term energy supply,

and shall have regard, in carrying out these functions, to the effect on the environment of activities connected with the conveyance of gas through pipes.

- (5A) In carrying out their respective functions under this Part in accordance with the preceding provisions of this section the Secretary of State and the Authority must have regard to-

- (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
- (b) Any other principles appearing to it to represent the best regulatory practice.

- (6) In this section consumers" includes both existing and future consumers.

- (7) In this section and sections 4AB and 4A, references to functions of the Secretary of State or the Authority under this Part include a reference to functions under the Utilities Act 2000 which relate to gas conveyed through pipes.

(8) In this Part, unless the context otherwise requires,-

“exemption” means an exemption granted under section 6A;

“licence” means a licence under section 7 or 7A and “licence holder” shall be construed accordingly.

Appendix 4 Section 35 of the Gas Act

- (1) If it appears to the Authority that the publication of any advice and information would promote the interests of consumers in relation to gas conveyed through pipes, the Authority may publish that advice or information in such manner as it thinks fit.
- (2) In publishing advice or information under this section the Authority shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporated), where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body.
- (3) Before deciding to publish under this section any advice or information relating to a particular individual or body of persons the Authority shall consult that individual or body.
- (4) In this section “consumers” includes both existing and future consumers.

Appendix 5 Section 105 of the Utilities Act

(1) Information which-

(a) has been obtained under or by virtue of the provisions of this Act, Part I of the 1986 Act or Part I of the 1989 Act; and

(b) relates to the affairs of any individual or to any particular business,

shall not be disclosed during the lifetime of the individual or so long as the business continues to be carried on, except as provided below.

(2) Subsection (1) does not apply to a disclosure made with the consent of the individual or the person for the time being carrying on the business.

(3) Subsection (1) does not apply to a disclosure if-

(a) it is made for the purpose of facilitating the performance of any functions of the Secretary of State, the Authority, the Council or the Competition Commission under the 1986 Act, the 1989 Act or this Act;

(b) it is required by a notice under section 38(1A) of the 1986 Act or section 28(2A) of the 1989 Act;

(c) it is made by a licence holder and is required to be made by a condition of his licence; or

(d) it is made by one licence holder to another and is required by that other licence holder for purposes connected with the carrying on of relevant activities.

(4) Subsection (1) does not apply to any disclosure of information made-

(a) for the purpose of facilitating the performance by a person or body mentioned in subsection (5) of any function under an Act or instrument specified in subsection (6);

(b) for the purpose of facilitating the performance by the Comptroller and Auditor General, the Health and Safety Commission or the Health and Safety Executive of any of his or its functions;

- (c) for the purpose of facilitating the exercise by the Secretary of State of any power conferred by the Financial Services Act 1986 or by the enactments relating to companies, insurance companies or insolvency;
- (d) for the purpose of facilitating the performance of the functions of an inspector appointed under the enactments relating to companies;
- (e) for the purpose of facilitating the performance by an official receiver of his functions under the enactments relating to insolvency or by a recognised professional body for the purposes of section 391 of the Insolvency Act 1986 of its functions as such a body;
- (f) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
- (g) for the purposes of any civil proceedings brought under or by virtue of the 1986 Act, the 1989 Act, this Act or any Act or instrument specified in subsection (6); or
- (h) in pursuance of a Community obligation.

(5) The persons and bodies specified for the purposes of subsection (4)(a) are—

- (a) a Minister of the Crown;
- (b) the Competition Commission;
- [(c) the Office of Fair Trading;]
- [(d) the Office of Communications;]
- (e) the Director General of Water Services;
- [(e) the Water Services Regulation Authority;]
- (f) the Director General of Electricity Supply for Northern Ireland;
- (g) the Director General of Gas for Northern Ireland;
- (h) [the Office of Rail Regulation];
- (i) the Civil Aviation Authority;

- (j) the Insolvency Practitioners Tribunal;
- (k) the Coal Authority; and
- (l) a local weights and measures authority in Great Britain.

(6) The Acts and instruments specified for the purposes of subsection (4)(a) and (g) are—

- (a) the Trade Descriptions Act 1968;
- (b) the Fair Trading Act 1973;
- (c) the Consumer Credit Act 1974;
- (d) the Estate Agents Act 1979;
- (e) the Competition Act 1980;
- (f) the National Audit Act 1983;
- (g) the Telecommunications Act 1984;
- (h) the Airports Act 1986;
- (i) the Insolvency Act 1986;
- (j) the Consumer Protection Act 1987;
- (k) the Control of Misleading Advertisements Regulations 1988;
- (l) the Water Act 1989, the Water Industry Act 1991 or any of the other consolidation Acts (within the meaning of section 206 of the Water Industry Act 1991) [or the Water Act 2003];
- (m) the Electricity (Northern Ireland) Order 1992;
- (n) the Railways Act 1993;
- (o) the Coal Industry Act 1994;
- (p) the Gas (Northern Ireland) Order 1996;

- (q) the Competition Act 1998;
- [(r) Part I of the Transport Act 2000];
- [(s) the Enterprise Act 2002];
- [(t) the Communications Act 2003];
- [(u) the Railways Act 2005].

(7) The Secretary of State may by order modify subsection (3), (4), (5) or (6).

(8) Nothing in subsection (1) is to be construed either as limiting the matters which may be—

- (a) published under section 33DA or 35 of the 1986 Act or section 42AA or 48 of the 1989 Act;
- (b) made public by the Authority as part of a notice under section 26; or
- (c) included in, or made public as part of, a report of the Authority, the Council or the Competition Commission under any provision of this Act, Part I of the 1986 Act or Part I of the 1989 Act;

or as applying to information which has been so published or has been made public as part of such a notice or such a report.

(9) A person who discloses any information in contravention of this section is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(10) In this section—

“licence holder” means the holder of a gas licence or an electricity licence;
and

“relevant activities”, in relation to a licence holder, means activities he is authorised by his licence to carry on (including, in the case of a gas

transporter, the activities mentioned in section 7(1)(b) and (c) of the 1986 Act).

(11) Information obtained by the Authority in the exercise of functions which are exercisable concurrently with [the Office of Fair Trading] under Part I of the Competition Act 1998 is subject to [Part 9 of the Enterprise Act 2002 (Information)] and not to subsections (1) to (10) of this section.

(12) The power to make an order under subsection (7) is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Appendix 6 Section 5A of the Utilities Act

(1) This section applies where-

- (a) the Authority is proposing to do anything for the purposes of, or in connection with, the carrying out of any function exercisable by it under, or by virtue of, Part 1 of the 1986 Act or Part 1 of the 1989 Act; and
- (b) it appears to the Authority that the proposal is important;

but this section does not apply if it appears to the Authority that the urgency of the matter makes it impracticable or inappropriate for the Authority to comply with the requirements of this section.

(2) A proposal is important for the purposes of this section only if its implementation would be likely to do one or more of the following:

- (a) involve a major change in the activities carried out by the Authority;
- (b) have a significant impact on persons engaged in the shipping, transportation or supply of gas conveyed through pipes or in the generation, transmission, distribution or supply of electricity;
- (c) have a significant impact upon persons engaged in commercial activities connected with the shipping, transportation or supply of gas conveyed through pipes or with the generation, transmission, distribution or supply of electricity;
- (d) have a significant impact on the general public in Great Britain or in a part of Great Britain; or
- (e) have significant effects on the environment.

(3) Before implementing its proposal, the Authority must either-

- (a) carry out and publish an assessment of the likely impact of implementing the proposal; or
- (b) publish a statement setting out its reasons for thinking that it is unnecessary for it to carry out an assessment.

(4) An assessment carried out under this section must-

- (a) include an assessment of the likely effects on the environment of implementing the proposal; and

(b) relate to such other matters as the Authority considers appropriate.

(5) In determining the matters to which an assessment under this section should relate, the Authority must have regard to such general guidance relating to the carrying out of impact assessments as it considers appropriate.

(6) An assessment carried out under this section may take such form as the Authority considers appropriate.

(7) Where the Authority publishes an assessment under this section-

- (a) it must provide an opportunity of making representations to the Authority about its proposal to members of the public and other persons who, in the Authority's opinion, are likely to be affected to a significant extent by the proposal's implementation;
- (b) the published assessment must be accompanied by a statement setting out how representations may be made; and
- (c) the Authority must not implement its proposal unless the period for making representations about the proposal has expired and it has considered all the representations that were made in that period.

(8) Where the Authority is required (apart from this section)-

- (a) to consult about a proposal to which this section applies, or
- (b) to give a person an opportunity of making representations about it,

the requirements of this section are in addition to, but may be performed contemporaneously with, the other requirements.

(9) Every report under section 5(1) must set out-

- (a) a list of the assessments under this section carried out during the financial year to which the report relates; and

- (b) a summary of the decisions taken during that year in relation to proposals to which assessments carried out in that year or previous financial years relate.

(10) The publication of anything under this section must be in such manner as the Authority considers appropriate for bringing it to the attention of the persons who, in the Authority's opinion, are likely to be affected if its proposal is implemented.

(11) References in sections 4AA, 4AB and 4A of the 1986 Act to functions of the Authority under Part 1 of that Act include references to any functions of the Authority under this section that are exercisable in relation to a proposal to do anything for the purposes of, or in connection with, the carrying out of any function of the Authority under Part 1 of the 1986 Act.

(12) References in sections 3A, 3B and 3C of the 1989 Act to functions of the Authority under Part 1 of that Act include references to any functions of the Authority under this section that are exercisable in relation to a proposal to do anything for the purposes of, or in connection with, the carrying out of any function of the Authority under Part 1 of the 1989 Act.

Appendix 7 Standard Special Condition A7

Requirement to Enter into Transportation Arrangements in Conformity with the Network Code

1. Except in a case in which the Authority accepts otherwise, the licensee shall only enter into transportation arrangements which are in conformity with any relevant provisions of the network code
2. NOT USED
3. NOT USED
4. If and in so far as the Authority so consents, this condition shall have effect as if the definition of “transportation arrangements” in Standard Special Condition A3 (Definitions and Interpretation) referred only to gas consisting wholly or mainly of methane.
5. The licence shall comply with any obligation in the network code to disclose information relating to:
 - (i) the operation of the pipe-line system to which this licence relates; or
 - (ii) any market relating to the pipe-line system to which this licence relates.

Appendix 8 Standard Special Condition A11

Network Code and Uniform Network Code

Transportation Arrangements

1. The licensee shall establish transportation arrangements, pursuant to paragraphs 3 and 6 of this condition, in respect of matters other than those to which Standard Special Conditions A4 (Charging – General) and A5 (Obligations as Regard Charging Methodology) relate, which are calculated, consistent with the licensee's duties under section 9 of the Act, to facilitate the achievement of the following objectives –
 - (a) the efficient and economic operation of the pipe-line system to which this licence relates;
 - (b) so far as is consistent with sub-paragraph (a), the coordinated, efficient and economic operation of (i) the combined pipe-line system, and/ or (ii) the pipe-line system of one or more other relevant gas transporters;
 - (c) so far as is consistent with sub-paragraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence;
 - (d) so far as is consistent with sub-paragraphs (a) to (c) the securing of effective competition:
 - (i) between relevant shippers;
 - (ii) between relevant suppliers; and/or
 - (iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers;
 - (e) so far as is consistent with sub-paragraphs (a) to (d), the provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards (within the meaning of paragraph 4 of standard condition 32A (Security of Supply –

Domestic Customers) of the standard conditions of Gas Suppliers' licences) are satisfied as respects the availability of gas to their domestic customers; and

- (f) so far as is consistent with sub-paragraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code;

hereinafter referred to as the “**relevant objectives**”.

- 2. In relation to a proposed modification of the network code modification procedures, a reference to the relevant objectives is a reference to the requirements in paragraphs 9 and 12 of this condition (to the extent that those requirements do not conflict with the objectives set out in paragraph 1).

Network Code

- 3. Subject to paragraph 4, in respect of the pipe-line system to which this licence relates, the licensee shall, by the date at which this condition becomes effective (unless the Authority consents otherwise in writing), have prepared a document (the “**network code**”) setting out (together with the terms of any other arrangements which the licensee considers it appropriate to set out in the document):
 - (a) the terms of the arrangements made in pursuance of paragraph 1 save in so far as they relate to matters regulated by standard condition 4B (Connection Charges etc) or are contained in such an agreement, or an agreement of such a class or description, as may be designated by the Authority for the purposes of this condition; and
 - (b) the network code modification procedures established pursuant to paragraph 7 to the extent that such procedures differ from those set out in the uniform network code following Authority consent pursuant to paragraph 8

and the licensee shall furnish the Authority with a copy thereof.

4. Where the holder of this licence also holds, in the same legal entity, one or more other gas transporter licences for relevant gas transporters, it may apply to the Authority for written consent to prepare a single network code in respect of the pipe-line systems to which those licences relate, which consent may be granted subject to such conditions as the Authority may direct.
5. The network code prepared by or on behalf of the licensee shall incorporate by reference the terms of the uniform network code except where the Authority consents otherwise in writing; and references in the conditions of this licence to the network code include the uniform network code (as may be varied from time to time) as so incorporated, unless otherwise stated.

Uniform Network Code

6. The licensee shall, together with the other relevant gas transporters, by the date at which this condition becomes effective (unless the Authority consents otherwise in writing), have prepared a document (the “**uniform network code**”) setting out:
 - (a) the terms of transportation arrangements established by the licensee and other relevant gas transporters, to the extent that such terms are common, or are not in conflict, between relevant gas transporters; and
 - (b) the network code modification procedures established pursuant to paragraph 7, which are, subject to paragraph 8, incorporated by reference into each network code prepared by or on behalf of each relevant gas transporter,

and the licensee shall furnish the Authority with a copy thereof.

Network Code Modification Procedures

7. The licensee shall, together with the other relevant gas transporters, establish and operate procedures (“**network code modification procedures**”), for the modification of the uniform network code and/or of any network code prepared

by or on behalf of each relevant gas transporter (including modification of the network code modification procedures themselves) so as to better facilitate, consistent with the licensee's duties under section 9 of the Act, the achievement of the relevant objectives.

8. In accordance with paragraphs 5 and 6, unless the Authority consents otherwise in writing, the network code modification procedures shall be contained in the uniform network code.
9. The network code modification procedures shall provide for:
 - (a) a mechanism by which any of
 - (i) the uniform network code; and
 - (ii) each of the network codes prepared by or on behalf of each relevant gas transporter, may be modified;
 - (b)
 - (i) the making of proposals for the modification of the uniform network code in accordance with paragraph 10 (a) of this condition; and/or
 - (ii) the making of proposals for the modification of a network code prepared by or on behalf of a relevant gas transporter in accordance with paragraph 11(a) of this condition;
 - (c) the making of alternative modification proposals in accordance with paragraphs 10(b) and 11(b) of this condition, except in a case where the Authority otherwise directs in writing;
 - (d) the giving of adequate publicity to any such proposal including, in particular, drawing it to the attention of all relevant gas transporters and all relevant shippers and sending a copy of the proposal to any person who asks for one;
 - (e) the seeking of the views of the Authority on any matter connected with any such proposal;

- (f) the consideration of any representations relating to such a proposal made (and not withdrawn) by the licensee, any other relevant gas transporter, any relevant shipper, or any gas shipper or other person likely to be materially affected were the proposal to be implemented; and
- (g) where the Authority accepts that the uniform network code or a network code prepared by or on behalf of a relevant gas transporter may require modification as a matter of urgency, the exclusion, acceleration or other variation, subject to the Authority's approval, of any particular procedural steps which would otherwise be applicable.

10. In respect of the uniform network code:

- (a) a modification proposal may be made by the following:
 - (i) the licensee,
 - (ii) each other relevant gas transporter,
 - (iii) any relevant shipper identified in the network code modification procedures as being entitled to propose a modification, and/or
 - (iv) any other relevant person (a **"third party participant"**) identified (individually or as a member of a class of persons) in the network code modification procedures as being entitled to propose a modification; and
- (b) where a modification proposal has been made under paragraph 10(a) of this condition (an **"original proposal"**) alternative modification proposals may be made, in respect of any such original proposal, by any of the parties listed in paragraph 10(a) of this condition with the exception of the person who made the original proposal.

11. In respect of each network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it):

- (a) a modification proposal may be made by one of the following:

- (i) the licensee, to the extent that the modification proposed relates to the pipe-line system to which this licence relates,
 - (ii) any relevant shipper identified in the network code modification procedures as being entitled to propose a modification;
 - (iii) a DN operator with whom the licensee has entered into transportation arrangements in respect of the pipe-line system to which this licence relates; and/or
 - (iv) any other relevant person (a **“third party participant”**) identified (individually or as a member of a class of persons) in the network code modification procedures as being entitled to propose a modification; and
- (b) where a modification proposal has been made under paragraph 11(a) of this condition (an **“original proposal”**), alternative modification proposals may be made, in respect of any such original proposal, by any of the parties listed in paragraph 11(a) of this condition with the exception of the person who made the original proposal.

12. Subject to paragraphs 9, 10 and 11 of this condition, the network code modification procedures may include provisions which differ as between proposed modifications to the uniform network code and proposed modifications to each network code prepared by or on behalf of each relevant gas transporter (excluding the terms of the uniform network code incorporated within it).

Modification of Network Code and Uniform Network Code

13. The licensee shall not make any modification to the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) or make or permit any modification to the uniform network code except:
- (a) to comply with paragraph 15(b) or 16; or
 - (b) with the written consent of the Authority;

and shall furnish or cause to be furnished to the Authority a copy of any such modification made.

14. Where:

- (a) the Health and Safety Executive have given a notice to the licensee in pursuance of this paragraph referring to a matter relating to the protection of the public from dangers arising from the conveyance of gas through the pipe-line system to which this licence relates; and
- (b) a modification to the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and/or the uniform network code could, consistent with the relevant objectives, appropriately deal with the matter,

the licensee shall propose such a modification in accordance with the network code modification procedures, and any requirement that a modification be such as to better facilitate the achievement of the relevant objectives shall be treated as met if the modification is consistent with those objectives.

15. Where a proposal is made in accordance with the network code modification procedures to modify the network code prepared by or on behalf of the licensee, (excluding the terms of the uniform network code incorporated within it) or the uniform network code the licensee shall:

- (a) as soon as is reasonably practicable, give notice to the Authority:
 - (i) giving particulars of the proposal;
 - (ii) where an alternative proposal is made in respect of the same matter as the original proposal, giving particulars of that alternative proposal;
 - (iii) giving particulars of any representations by:
 - (aa) the licensee,
 - (bb) any other relevant gas transporter,

- (cc) any relevant shipper identified in the network code modification procedures as being entitled to propose a modification,
 - (dd) in respect of modifications to a network code (excluding the terms of the uniform network code incorporated within it) only, a DN operator with whom the licensee has entered into transportation arrangements in respect of the pipe-line system to which this licence relates, or
 - (ee) any other person with respect to those proposals;
- (iv) including a recommendation (on the part of such person or body as may be provided for in the network code modification procedures) as to whether any proposed modification should or should not be made, and the factors which (in the opinion of such person or body) justify the making or not making of a proposed modification; and
- (v) giving such further information as may be required to be given to the Authority by the network code modification procedures; and
- (b) comply with any direction of the Authority to make a modification to the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and/or the uniform network code in accordance with a proposal described in a notice given to the Authority under paragraph 15(a) which, in the opinion of the Authority, will, as compared to the existing provisions of the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and/or (as the case may be) the uniform network code or any alternative proposal, better facilitate, consistent with the licensee's duties under section 9 of the Act, the achievement of the relevant objectives.

16. Where any directions are given to the licensee under section 19 or 21(1) of the Act, the licensee shall make such modifications to the network code prepared by

or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and/or the uniform network code as may be necessary to enable the licensee to comply with the directions under section 19 or 21(1) of the Act without contravening Standard Special Condition A7 (Requirement to Enter into Transportation Arrangements in Conformity with the Network Code).

17. The licensee shall:

- (a) prepare and publish a summary of (i) the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and (ii) the uniform network code as modified or changed from time to time in such form and manner as the Authority may from time to time direct;
- (b) make available a copy of the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and the uniform network code as modified from time to time to any person who asks for one and makes such payment to (or to a person nominated by) the licensee in respect of the cost thereof as it may require not exceeding such amount as the Authority may from time to time approve for the purposes hereof; and
- (c) provide, or cause to be provided, a copy of the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and the uniform network code as modified from time to time on a web-site freely available to all interested parties (the web-site address of which shall be disseminated to such interested parties).

Determinations by the Authority

18. Where a provision of the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and/or the uniform network code requires that, in circumstances specified in the provision, a determination by the licensee pursuant to that provision in a particular case should be such as is calculated to facilitate the achievement of the relevant objectives, any question arising thereunder as to whether the

licensee has complied with that requirement shall be determined by the Authority.

19. The network code modification procedures shall provide that any question arising under the network code modification procedures as to:
- (a) whether a gas shipper or other person is likely to be materially affected by a proposal to modify the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and/or the uniform network code were such a proposal to be implemented; or
 - (b) whether representations relating to such a proposal and made in pursuance of the rules have been properly considered by the licensee,
- shall be determined by the Authority.

Miscellaneous

20. **NOT USED**
21. **NOT USED**
22. If the Authority so consents, this condition shall have effect as if the definition of “transportation arrangements” in Standard Special Condition A3 (Definitions and Interpretation) referred only to gas consisting wholly or mainly of methane.
23. Any reference to “relevant shipper” in any of paragraphs 9(d), 9(f), 10(a)(iii), 11(a)(ii), or 15(a)(iii)(cc) shall, where it relates to any proposed modification which could have been proposed by a third party participant under the network code modification procedures, be treated as if it were also a reference to all such third party participants.
24. (a) In this condition:

“combined pipe-line system”

means the pipe-line system to which this licence relates and the pipe-line system of each other relevant gas transporter taken as

a whole;
“**network code modification procedures**” means the modification procedures referred to in paragraph 7 of this condition;

- (b) Where the context requires,
 - (i) references to a network code shall include the equivalent document prepared by each other relevant gas transporter (as from time to time modified) pursuant to the condition in its licence corresponding to this condition; and
 - (ii) references to transportation arrangements shall include the corresponding arrangements made by each other relevant gas transporter.

- (c) For the purposes of this condition, relevant shipper shall have the meaning given to that term in Standard Special Condition A3 (Definitions and Interpretation) and references to a relevant shipper include any gas shipper which is a relevant shipper for the purposes of the licence of any relevant gas transporter.

Appendix 9 Illustrative list of information that could be released

Ofgem notes it has also previously described information that it considers could be considered as falling under the scope of the licence condition for release by the relevant GT licensee to the wider market. This information includes (but is not limited to) the following with indicated data provided ahead of the day and actual data provided during the gas day.

- ◆ balancing information including:
 - aggregate physical inputs to the NTS by terminal;
 - aggregate physical off-takes from the NTS on an exit zone basis;
 - daily linepack levels and targets;
 - aggregate volume of unsold daily entry capacity;
 - zonal demand forecasts;
 - national and zonal supply forecasts;
 - aggregate physical flows on the interconnector; and
 - aggregate storage injections and withdrawals;
- ◆ entry capacity market information to be provided during the day:
 - daily average capacity prices for firm and interruptible capacity;
 - daily capacity buy back prices;
 - aggregate volumes of daily firm and interruptible entry capacity sold;
and
 - aggregate levels of daily entry capacity interruption;
- ◆ exit capacity market information:
 - volume of exit interruption each day by exit zone.

In respect of the granularity of this type of information, Ofgem considers that it may be appropriate for the relevant GT licensee to release updates of relevant information at regular intervals (e.g., at hourly intervals through the day).