

**Modification UNC 006 (0727): Publication of Near Real Time Data
at UK Sub-terminals:
Impact Assessment Consultation
Response by Barclays Capital
24 June 2005**

Barclays Capital continues to support the proposal for modification 727 from energywatch. In our view, Ofgem's impact assessment makes a significant additional contribution to the debate, in particular, by quantifying further the likelihood and materiality of many of the purported costs and risks that have been raised against the proposal. The rigorous and careful analysis presented in the Impact Assessment significantly reinforces our view that the modification will yield significant efficiency savings to the ultimate benefit of UK gas consumers and we continue to urge the Authority to accept the proposed modification. The following sections provide our views on some of the issues raised for consultation in the Impact Assessment.

Information Intended for Release under the Proposal

Ofgem request views on the clarity of the draft legal text in respect of the timing of the information when compared with the timing of the Phase 3 Category 1 information stemming from the DTI information initiative. There seems to be a lack of clarity and some potential ambiguity in respect of the definition and timing of this information in the legal text, namely:

- It is not clear whether the information would be an hourly "snapshot" (as in the Phase 3 Category 1 information) or would reflect the average flows over the previous hour. In this respect, given the potential data quality issues, we would prefer to see the average hourly flow for the previous hour.*
- Given that the Phase 3 Category 1 will be available near to real time with "around 5 minute delay" it is not clear why the disaggregated data would only be available "within one hour of the end of the hour to which the data relates" as per the draft legal text. If the aggregated data can be made available with only a 5 minute delay (presumably from the end of the hour to which it relates) it is not clear why disaggregated data could take significantly longer to publish, since presumably NGT would require the disaggregated data in order to aggregate it before publishing it within 5 minutes. If anything the disaggregated data should be available sooner than the aggregated data would be.*
- The text states that "where operational and market data is sent to Transco on a day that is not a Business Day, Transco shall publish such data on the next following Business Day". This would seem to permit significant delays in the release of information relating to weekends and holidays, eg, the information could be delayed by as much as four days over the Easter holiday). Given the operational nature of this information, this information should be published continuously on all days, irrespective of whether they are business days or not.*

The draft also incorporates some inappropriate "carve outs" which would absolve Transco from the obligation to publish this information in certain circumstances, specifically:

- ***If the data is not available (5.9.2a).*** While Transco can clearly not publish data it does not have, this provision would leave Transco with no positive obligation or incentive to attempt to secure the information for publication. This clause should therefore be replaced with one requiring Transco to use all reasonable endeavours to obtain and publish the relevant information.
- ***If Transco believes “the data is erroneous”.*** This begs the question of how accurate the data would need to be to qualify for publication and how this subjective test would be monitored and policed to ensure the continued provision of valuable, if slightly inaccurate, information. Instead of not releasing this information, it would be significantly more transparent if Transco continued to release the information but also provides the market with information regarding the level of accuracy of the data and with “flags” highlighting specific data items which may be unreliable.
- ***If Transco believes that “such data could be misleading”.*** This raises similar concerns to those associated with erroneous data, but is an even more subjective test. In particular, it involves some speculation on how market participants might interpret and respond to a particular data item since, presumably, even accurate data could be misleading if not taken in the appropriate context by the recipient. This clause appears to add nothing useful over and above the issues surrounding data accuracy and should not be a basis for withholding publication. (If necessary this issue could also be handled by flagging potentially “misleading” data rather than not publishing it at all.)
- ***If Transco is prevented from disclosing such data by virtue of an obligation of confidentiality.*** This is wholly inappropriate and would allow bilateral agreements – whether existing or agreed in future – to frustrate the obligation to publish this information. Agreeing to this clause would establish a curious precedent of a party to the Network Code absolving themselves from their responsibilities therein by demonstrating that this would place them in breach of any clause in a voluntarily agreed bilateral contract outside of the Code. It would also appear to render section 105 of the Utilities Act redundant if a licence requirement to release information (via the Network Code) can in any case be overridden by bilateral agreements.

Taken together these “carve outs” could result in significant “gaps” in the data stream provided to market participants and market participants would not necessarily know the grounds on which the gaps have arisen (eg, whether the data was unavailable or erroneous etc). This could in turn undermine the overall credibility and ability to rely on the data which is actually received. Overall, we believe that a much more transparent and auditable approach would be to release all data with appropriate caveats and narrative should Transco have reservations about the veracity or other characteristics of that data.

Proposed Baseline for Assessment

Ofgem correctly identify that the modification proposal would provide benefits over and above the DTI voluntary scheme. However, it is not clear that the voluntary scheme should be assumed to be part of the baseline for assessment given its voluntary nature and the

threats of some participants to withdraw from the scheme. If the voluntary scheme is not implemented – or only partially implemented – then the incremental benefits of the modification will be significantly higher. Any assessment against a baseline which includes the voluntary scheme is therefore likely to be a conservative estimate of the minimum potential benefits stemming from the modification.

Assessment of Benefits

Ofgem's assessment of the benefits under economy and efficiency, security of supply, impact on customers and environmental impact is complete and thorough.

We have not had the benefit of reviewing the Oxera analysis so cannot comment on the accuracy of their benefit calculation in terms of reduced market spreads. However, we would highlight that our initial analysis in December 2003 already factored in the effect of reducing spreads in uncertain periods only rather than assuming it applied across all traded volumes. Our calculation was based on an observed range of market spreads from 0.10p/therm to 0.2p/therm. We then assumed that if the highest observed spreads were reduced to the lowest for 50 per cent of periods, then this would result in an average reduction of 0.05p/therm on total traded volumes. To take our average spread reduction and then apply it only to "uncertain" trading periods – as Oxera appear to have done – would therefore double count the assumed proportion of uncertain periods and, hence, result in a significant underestimate of the likely benefits. We therefore consider that our calculation remains a reasonable and conservative estimate of the likely benefits, particularly since the benefits of reduced uncertainty, increased liquidity and reduced spreads are likely to extend across all periods (albeit that the benefit would be highest for the most uncertain periods).

IT Costs

We share Ofgem's view that the development timescale of 18 months appears excessive. Given that this estimate appears to already account for the requirements of DTI information initiative, it seems inconceivable that it would take a further 18 months to publish disaggregated data when the systems for receipt, aggregation and publication of this data already exist.

Contract Renegotiation

In the Final Modification Report on 727, Transco state (our emphasis):

- "it cannot provide support to a Proposal that would place it in breach of various contractual and legal obligations typically contained within bilateral agreements such as Network Entry Agreements";
- "the disclosure of this category of information in itself would not leave Transco exposed to any liabilities either under section 105 Utilities Act 2002, however, it would leave Transco exposed to breaches of various bilateral confidentiality agreements, typically contained with Network Entry Agreements and Storage Connection Agreements. However should

Ofgem direct Transco to implement this Proposal, this would **invariably** have an adverse impact on the relationships (contractual) between Transco and the upstream parties.

- “Transco agrees with those respondents that have stated there are contractual and legal issues associated to this Proposal **that would require lengthy and complex negotiations** prior to the publication of the sub-terminal flow data to the wider market”.

We were therefore somewhat surprised to learn from the Impact Assessment that Transco “has not undertaken its own detailed contract by contract analysis of these agreements from which to judge the likely level of liability risk”. Given our prior expectations, we were less surprised, however, with the result of Ofgem’s own preliminary assessment which showed that “the majority of contracts enable the disclosure of information by Transco to third parties because they either contain no confidentiality provisions” or those provisions “enable disclosure when Transco NTS is required to do so by a “legal requirement” or by “law””. We therefore share Ofgem’s view that Transco NTS has yet to make a compelling case for this to be considered a material issue in the assessment of this modification.

Risks and Unintended Consequences

We remain concerned that some parties are threatening to withdraw information provided under the DTI information initiative. However, we share Ofgem’s view that such behaviour would be unreasonable as it would compromise the safety and efficient operation of the NTS. The fact that there is not a clear link between the information provided voluntarily to Transco NTS by producers to aid the TBE process and that covered by the proposal further emphasises this lack of reasonableness. We take considerable comfort from Ofgem’s view that the risk of this information being withheld is lower than earlier anticipated and that it does not anticipate a serious movement to withhold this information. As we have stated previously, however, the mere fact that this threat could be made in respect of such valuable information provides a *prima facie* case for information provision to be placed on a guaranteed basis via a legislative or regulatory route.

Duplicate Metering

We share Ofgem’s view that the installation of duplicate metering would be a relatively inefficient way of acquiring physical gas flow data, particularly given that the renegotiation of entry contracts remains a viable option. However, even if Transco are forced down this route, the modification would still given a significant net benefit to customers.

Data Accuracy

While data accuracy is clearly a concern, we share Ofgem’s view that the potential for data inaccuracy alone should not mean that information is not released. Instead we believe that NGT should provide the market with information regarding the level of accuracy of the information released and, where appropriate and possible, promptly flag specific data items which are particularly likely to be inaccurate (eg, following a meter failure).

Summary of the Costs and Benefits

Ofgem's assessment of the benefits and costs of the proposal and the associated risks appears complete and robust. As we outlined in our initial paper in December 2003, the benefits of greater information release transparency significantly exceed any likely costs. The energywatch proposal represents a significant improvement over the current baseline by providing prompt, disaggregated data on physical supply conditions. Even accounting for the implementation of the DTI information initiative, therefore, the acceptance of this proposal would realise significant net benefits and better facilitate the achievement of Transco's relevant objectives by improving market efficiency, competition and security of supply. Ofgem's more detailed analysis of the potential risks to the delivery of these benefits – in terms of legal obstacles and the potential for data inaccuracy - further reinforces this conclusion.