

To: The Company Secretary  
Transco NTS  
Transco plc  
1-3 Strand  
London WC2N 5EH

To: The Company Secretary  
Transco RDNs  
Transco plc  
1-3 Strand  
London WC2N 5EH

## **MODIFICATIONS TO THE TWO GAS TRANSPORTERS LICENCES HELD BY TRANSCO PLC IN RESPECT OF TRANSCO NTS AND TRANSCO RDNs<sup>1</sup>**

DIRECTION PURSUANT TO SECTION 23 OF THE GAS ACT 1986

### **Summary**

1. This Direction (the “**Direction**”) 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**”) proposed sale of one or more of Transco plc’s (“**Transco**”) local gas distribution networks (“**DNs**”) (the “**Transaction**”).
2. This Direction modifies only the two gas transporters (“**GT**”) licences currently held by Transco<sup>2</sup> in respect of its National Transmission System (NTS) (the “**Original Transco Licence**” – as further defined in paragraph 3 below) and the retained distribution business (RDN) (the “**RDN Additional Transco Licence**” – as further defined in paragraph 16 below). As these modifications relate to:

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<sup>1</sup> 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 pursuant to consents granted by the Authority (described further at paragraphs 14 to 26 below).

<sup>2</sup> It should be noted that these modifications do not apply to the four IDN GT Licences held by each of Northern Gas Networks Limited (previously Blackwater F Limited), Southern Gas Networks Limited (previously Blackwater G Limited), Scotland Gas Networks Limited (previously Blackwater SC A Limited) and Wales & West Utilities Limited (previously Blackwater 2 Limited).

- (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) the introduction of a 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 (such new Special Condition E9 in the RDN Additional Transco Licence to be largely equivalent to Special Condition C19 (as modified by this Direction) in the Original Transco Licence),

the Authority is directing 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 modification 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.

## **Background**

- 3. 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**”).
- 4. 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.
- 5. 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 Transco<sup>3</sup> 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 website<sup>4</sup>.

6. The Original Transco Licence and the five Additional Licences are together referred to in this Direction as the “**Six Licences**”.
7. 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**

8. 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 Licences<sup>5</sup> (the “**Initial S.23 Notice**”) together with an explanatory document<sup>6</sup>.
9. 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 independent DNs which have now 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

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

<sup>4</sup> [http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/9161\\_A\\_copy\\_of\\_the\\_GT\\_Licences\\_\\_issued\\_to\\_Transco\\_\\_05.11.04\\_1.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/9161_A_copy_of_the_GT_Licences__issued_to_Transco__05.11.04_1.pdf)

<sup>5</sup> [http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/gasdistributionnetworksale&levelids=,1\\_8936#top8936](http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/gasdistributionnetworksale&levelids=,1_8936#top8936)

<sup>6</sup> 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

Additional Licences would relate to specific DN assets and the Original Transco Licence would relate to the NTS assets only.

10. 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<sup>7</sup>). In addition, Transco proposed to transfer four of the five Additional Licences to each of the four wholly owned subsidiary companies.
11. Following hive-down of the four IDNs and transfer of the four relevant licences, Transco proposed to sell the shares in each of these four relevant wholly owned subsidiary companies to third party purchasers.
12. 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 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.
13. 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.
14. 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

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<sup>7</sup> As noted in footnote 1 above, these companies have now changed their names to Northern Gas Networks Limited, Scotland Gas Networks Limited, Southern Gas Networks Limited and Wales & West Utilities Limited respectively.

relevant wholly owned subsidiary companies (the “**Consent Directions**”)<sup>8</sup>. 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 become effective. In addition, the Authority attached a number of conditions subsequent to its consents. In particular (and 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.

15. 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.
16. 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 respectively with effect from 1 February 2005<sup>9</sup>. As a result, since 1 February 2005, there has been revenue separation between the NTS and each of the four IDNs which have now been 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 to be disposed of by Transco (referred to in this Direction as the “**IDN Additional Licences**”), one of the Additional Licences has related only to the four RDNs retained by Transco (referred to in this Direction as the “**RDN Additional Transco Licence**”) and the Original Transco Licence has related to the NTS only.

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

17. As part of the Transaction and pursuant to section 23(3) and section 8AA of the Act, on 14 February 2005 the Authority published two notices proposing

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<sup>8</sup> [http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/10034\\_2105.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/10034_2105.pdf)

<sup>9</sup> [http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/10043\\_2405.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/10043_2405.pdf)

modifications to each of the Six Licences<sup>10</sup> together with an explanatory document<sup>11</sup>. 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.

18. 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.
19. 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.
20. 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

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<sup>10</sup> [http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/gasdistributionnetworksale&levelids=.1\\_9669#top9669](http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/gasdistributionnetworksale&levelids=.1_9669#top9669)

<sup>11</sup> 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

satisfied to allow hive-down on 1 May 2005 (or such later date as the Authority may direct in writing)<sup>12</sup>;

- 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
- 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.

- 21. As a result of the ASC29 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

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<sup>12</sup> 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.

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 proceed<sup>13</sup>. 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<sup>14</sup> 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**

22. 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 are protected in a divested industry structure.
23. As a result, on 26 April 2005, the Authority, pursuant to section 23(3) of the Act, gave notice (the “**Third S.23 Notice**”) <sup>15</sup> 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 S23 Notice <sup>16</sup>.
24. 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

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<sup>13</sup> The Authority, in its ASC 29 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 27<sup>th</sup> 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.

<sup>14</sup> Please refer to footnote 2 for the current names of these companies which changed following completion of the Transaction

<sup>15</sup> [http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/11329\\_Appendix\\_6\\_S23notice.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/11329_Appendix_6_S23notice.pdf)

<sup>16</sup> [http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/11343\\_FinalProposalsforInterimIncentivesFormalconsultation.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/11343_FinalProposalsforInterimIncentivesFormalconsultation.pdf)

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, at 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**

25. 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.
26. 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 14 to 16 (inclusive) above) and April 2005 (described at paragraphs 19 to 21 (inclusive) above), on 25 May 2005, the Authority:
  - a. issued an open letter (the "Conditions Subsequent Letter")<sup>17</sup> 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 Third S.23 Direction. The modifications were to take effect in the case of

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<sup>17</sup> Gas Distribution Network Sales – Final consent to sale of four of National Grid Transco's gas distribution networks, ofgem May 2005

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:-

<b>Distribution Network</b>	<b>Blackwater Company<sup>18</sup></b>	<b>Purchaser</b>
North of England DN	Blackwater F Limited	Northern Gas Networks Holdings Limited (previously Gas Network Limited)
Scotland DN	Blackwater SC A Limited	Scotia Gas Networks plc (previously Scotia Gas Networks Limited)
South of England DN	Blackwater G Limited	Scotia Gas Networks plc (previously Scotia Gas Networks Limited)
Wales & West DN	Blackwater 2 Limited	MGN Gas Networks (Senior Finance) Limited

27. 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.

#### **The C19/E9 S.23 Notice**

28. The Authority considered that certain aspects of the Original Transco Licence and the RDN Additional Transco Licence required clarification consistent with the Authority's decisions in relation to business separation in the context of the Transaction in order to ensure that the Authority's policy objective, namely that the NTS and RDN licences have licence conditions in place that mimic the effects of legal separation, was delivered in full and unambiguously.

<sup>18</sup> Please refer to footnote 2 for the current names of these companies which changed following completion of the Transaction

29. As a result, on 2 June 2005, the Authority pursuant to section 23(3) of the Act gave notice (the “**C19/E9 S.23 Notice**”) that it was proposing, as part of the Transaction, to modify further the Original Transco Licence and the RDN Additional Transco Licence as set out in the C19/E9 S.23 Notice and the annexes to the C19/E9 S.23 Notice.
30. In summary, the C19/E9 S.23 Notice proposed that:
- a. Special Condition 19 in the Original Transco Licence be modified; and
  - b. a new Special Condition E9 be introduced into the RDN Additional Transco Licence.
31. The Authority noted that it would be necessary to obtain Transco’s consent in respect of both the Original Transco Licence and the RDN Additional Transco Licence in accordance with the requirements of section 23(6) of the Act.
32. The Authority sent a copy of the C19/E9 S.23 Notice to the Secretary of State and has not received any objection or decision not to make the modifications to the Original Transco Licence and the RDN Additional Transco Licence.

### **Responses to the C19/E9 S.23 Notice**

33. By the close of the consultation period in respect of the C19/E9 S.23 Notice, the Authority received two responses (one from a DN and one from a shipper/supplier) neither of which were marked as confidential. Neither of these responses were withdrawn. The responses have been placed in the Ofgem library and are available on the Ofgem website<sup>19</sup>.
34. Both of the responses received expressed support for the modifications proposed stating that they improved the clarity of the drafting. The DN respondent stated that the proposed drafting more accurately reflected the policy decision taken by Ofgem during the DN sales process on business separation requirements

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[http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=areasofwork/gasdistributionnetworksale&levelids=,1\\_10881#top10881](http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=areasofwork/gasdistributionnetworksale&levelids=,1_10881#top10881)

between Transco plc's NTS business and its retained DN business, in particular, that any arrangements between the NTS and RDN do not unduly differ from those that exist, or could exist, between the NTS and any other DN owner. The shipper / supplier respondent supported the inclusion of an RDN Special Condition (Special Condition E9) and stated that its introduction was beneficial.

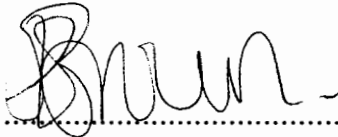
35. The Authority has carefully considered representations or objections made to it and not withdrawn in relation to its proposal to modify the Original Transco Licence and the RDN Additional Transco Licence.
36. On 12 July 2005, as required under section 23 of the Act, Transco provided the Authority with its written consent to the making of the proposed modifications to the Original Transco Licence and the RDN Additional Licence in the form set out in Schedule 1 to this Direction, such modifications to take effect immediately.

**Direction to modify**

37. With the written consent of Transco NTS and Transco RDN (as required in terms of section 23 of the Act) and in accordance with the powers contained in section 23 of the Act, the Authority hereby directs that:
  - a. the Original Transco Licence be modified by substituting for the existing Special Condition C19 (Undertaking from ultimate controller concerning non-discrimination between the NTS transportation activity and the Distribution Network Transportation activity) a new Special Condition C19 (Undertaking from ultimate controller concerning non-discrimination between the NTS transportation activity and the Distribution Network Transportation activity) in the form annexed in Schedule 1 Part A to this Direction.
  - b. the RDN Additional Transco Licence be modified by the introduction of 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 form annexed in Schedule 1 Part B to this Direction.

38. Pursuant to section 38A of the Act, the reasons for making this direction to modify the Original Transco Licence and the RDN Additional Transco Licence s set out in Schedule 1 to this Direction are stated in:
- a. the C19/E9 S.23 Notice; and
  - b. the documents listed in the C19/E9 S.23 Notice.
39. Copies of the documents referred to in paragraph 38 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](http://www.ofgem.gov.uk)

The official seal of the Gas and Electricity Markets Authority is affixed to this Direction and is authenticated by



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**Sonia Brown**  
**Director, Transportation**

**Duly authorised on behalf of the Authority**

**12 July 2005**

## Schedule 1

### Part A

#### Licence modifications

#### **Special Condition C 19. 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.

**Part 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 a 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 the 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 businesses of NTS operator, 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 NTS operator 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 NTS operator.