

UNDUE DISCRIMINATION FURTHER ISSUES FOR DISCUSSION

EOWG 01.02.2006

NG obligations

- Gas Act section 9
 - ...duty of GT to avoid any undue preference or undue discrimination.....in terms of which they undertake conveyance of gas
- NG GT licence SSC 6A – Conduct of transportation business
 -secure that no affiliate of licensee, shipper, supplier or DN operator obtains any unfair commercial advantage from a preferential or discriminatory arrangement.....
 - *This seems to suggest that it is the consequences of any different arrangements that are important rather than the arrangements themselves*

- Why relevant?
 - Issues concerning network access similar
 - Dominant player with downstream interests
 - Typical requirement under Communications Act *The Dominant Provider shall not unduly discriminate against particular persons or against a particular description of persons, in relation to network access*

Ofcom guidelines

- Consultation in June 2005 – Undue discrimination by SMP providers
- <http://www.ofcom.org.uk/consult/condocs/undsmpp/>
- Reasons to consult
 - Current approach prior to Act
 - Overly restrictive approach to harm to competition
 - *Requirements not to unduly discriminate* not widely understood by providers and their customers

Ofcom meaning of undue discrimination

- Undue discrimination describes when an SMP provider does not reflect relevant differences between (or does not reflect similarities in) the circumstances of customers in the transaction conditions it offers, and where such behaviour could harm competition

Ofcom guidelines

- 1) Ofcom will consider whether any differences in transaction conditions offered to two customers reflect relevant differences in the customers' circumstances; or whether any similarities are reflected in transaction conditions offered to the two customers
- 2) Ofcom will consider the capability of any differences (or similarities) in transaction conditions not objectively justified by relevant differences (or similarities) in the customers circumstances to harm competition (in past, now, in future)

What does this mean for gas offtake (1)?

- Is it reasonable to apply similar guidelines to gas offtake?
- The guidelines and NG obligations seem to be consistent given that an unfair commercial advantage could harm competition
- If not, why not?

What does this mean for gas offtake (2)?

- If it is reasonable to apply similar guidelines
- Then what seems to matter is customer circumstances and whether any differences in products offered could harm competition
- Simply
 - Do NTS customers; DNs, direct connects, interconnectors and storage, have the same characteristics / requirements?
 - Is the cost of serving them the same?
 - Do they compete in the same market?
 - What is best for overall efficiency and customer interests?
 - Discuss.....