

Statement by the Gas and Electricity Markets Authority, following an investigation into compliance by Global Utility Connections Ltd with its distribution licence obligations

8 August 2006

Background

1. The Gas and Electricity Markets Authority (“the Authority”) grants licences for the distribution of electricity. It has a duty to keep under review activities in the areas to which electricity licences apply. It also has a duty to issue an order to secure compliance where it is satisfied that a licence obligation is being, or is likely to be contravened and may impose a financial penalty in respect of a past or continuing contravention.
2. Global Utility Connections Ltd (“GUC”) is an Independent Distribution Network Operator (“IDNO”) and was granted its Distribution Licence on 22 October 2004.
3. As a consequence of changes to the Electricity Act 1989 (“the Act”), by the Utilities Act 2000, distribution was introduced as a separate licensable activity. These changes resulted in parties other than ex-Public Electricity Supplier distribution network operators, being able to apply for a licence to operate existing or newly built distribution networks. GUC was amongst the first applicants for such a licence.
4. Following contact by the DTI engineering inspectorate, Ofgem was in communication with GUC between May and July 2005 relating initially to matters of GUC’s compliance with the Provision of the Metering Point Administration Service (“MPAS”) and Compliance with the Master Registration Agreement (“MRA”) but latterly on issues relating to a wider range of licence obligations.

The Investigation

5. Ofgem has conducted an investigation into GUC’s compliance with a series of obligations under its distribution licence. In summary, the investigation has focussed on:
 - GUC’s accession to and compliance with the MRA;
 - GUC’s safety and security of supplies enquiry service; and
 - GUC’s compliance with a number of the financial ring fencing obligations.
6. Statutory requests for information pursuant to section 28 of the Act and under standard condition 24 of GUC’s IDNO licence were issued on 18 August 2005. These requests covered significant volumes of information.
7. Between August 2005 and April 2006, Ofgem made further enquiries of GUC, exchanged correspondence and held meetings to establish the position with regard to compliance with GUC’s distribution licence.
8. During the substantive period of the investigation, GUC underwent senior management changes.

9. Ofgem presented a report to the Authority which had been seen and commented upon by GUC. The report summarised the licence obligations and went on to describe Ofgem's investigation of the company's compliance with those obligations.
10. The investigation report highlighted the following areas of alleged licence breach:
 - Standard Condition 14 'Provision of the Metering Point Administration Service and Compliance with the Master Registration Agreement'. Specifically, GUC was alleged to be in breach of standard condition 14(1) and 14(2) between 22 April 2005 and 9 August 2005;
 - Standard Condition 6 'Safety and Security of Supplies Enquiry Service'. GUC was alleged to be in breach of standard condition 6(2) and 6(3) between 22 April 2005 and 16 December 2005;
 - Standard Condition BA5 'Credit Rating of the licensee'. GUC was alleged to be in breach of standard condition BA5(1) between 22 April 2005 and 15 December 2005;
 - Standard Condition BA2 'Restriction on Activity and financial ring fencing'. GUC was alleged to be in breach of this condition on one or more dates between 22 April 2005 and 11 April 2006;
 - Standard Condition BA3 'Availability of Resources'. GUC was alleged to be in breach of BA3(2) and (5) for the regulatory year 2005/ 6;
 - Standard Condition BA4 'Ultimate Controller'. GUC was alleged to be in breach of standard condition BA4(1) and (2a) from 23 November 2005 until 21 March 2006; and
 - Standard condition 29 'Disposal of Relevant Assets'. GUC was alleged to be in breach of standard condition 29(1) and (2) for the period 2 June 2005 until 23 November 2005.
11. Compliance with the MRA and in particular the MPAS are essential elements of distribution and supply arrangements. Without the appropriate processes in place, customers cannot rely on the protections that should be afforded to them and the potential for customers to switch could have been inhibited.
12. The 'safety and security of supplies enquiry' service arrangements are designed to ensure that connected customers have access to a 24 hour telephone service, 365 days a year in the event of an emergency or supply failure. A licensee is also required to have an up-to-date, approved statement setting out its telephony provisions. The absence or insufficient provision of such arrangements has the potential for consumer detriment.
13. The financial ring fencing conditions provide important safeguards for the financial stability of the licensee and provide two advantages for consumers:

- they provide protection against certain events that might otherwise lead to the insolvency of the licensee and so protect consumers from the associated uncertainty and possible disruption; and
- they are intended to allow the licensee to retain access to financial markets on reasonable terms and thus facilitate the funding of future investment.

GUC's response

14. GUC provided a written submission to the Authority on 7 July 2006. In its written submission, GUC acknowledged that it was in breach of the listed licence conditions but raised three specific points of context:
- in respect of the breach of standard condition 6 'Safety and Security of Supplies enquiry service', it estimates that at the time of the breach the numbers of connected customers were "relatively small";
 - in respect of the overall findings, GUC argued that the combination of building the initial businesses from start up, securing the first contracts and gaining licences all resulted in a period of confusion at a time when industry was undergoing significant change; and
 - senior management changes have been made.

The Authority's decision

15. The Authority has concluded that GUC **was in breach** of its distribution licence obligations under standard conditions 14(1) and (2), 6(2) and (3), BA5(1), BA2, BA3(2) and (5), BA4(1) and (2)(a) and 29(1) and (2) for the periods set out in paragraph 10.
16. Having concluded a finding of breach and in consideration of the investigation's findings, the Authority has had due regard to the aggravating and mitigating circumstances of the specifics of the case in accordance with the criteria set out in Ofgem's published financial penalties policy¹.
17. Having reviewed the facts of the case, the Authority considered that there was limited potential for consumer detriment and acknowledged the investigation did not reveal that any actual consumer detriment had occurred; GUC has stated that it did not charge customers for energy supplied during the period that it was unable to register meter points. Further, during the relevant period GUC does not appear to have made any financial gain of note.
18. The Authority notes that GUC has not disputed the findings of the investigation and has not provided any information during the course of the investigation, which might have led the Authority to a different finding.
19. The Authority recognised that GUC cooperated with Ofgem in order to achieve licence compliance. An enforcement order was therefore not required to secure compliance.
20. GUC has been operating in the market for a relatively short period in a new and developing market area.

¹ 'Utilities Act – Statement of policy with respect to financial penalties', published October 2003.

21. Therefore, having considered all the evidence of the case, the Authority has decided **not to impose a financial penalty** on GUC on this occasion for the breaches of its licence which occurred between April 2005 and April 2006.