

**Special Condition C8B: The NTS transportation owner activity revenue restriction**

**1. The principal restriction**

- (a) The licensee shall use its best endeavours in setting its charges to ensure that in respect of any formula year the revenue which it derives from its NTS transportation owner activity ( $TOR_t$ ) shall not exceed the maximum NTS transportation owner revenue ( $TOMR_t$ ).
  
- (b) (i) If in respect of any formula year the NTS transportation owner revenue exceeds the maximum NTS transportation owner revenue by more than 4 per cent of the latter, the licensee shall provide the Authority with a written explanation and, in the next following formula year, the licensee shall not effect any increase in prices for use of the NTS unless either:
  - (A) it has demonstrated to the reasonable satisfaction of the Authority that the NTS transportation owner revenue would not be likely to exceed the maximum NTS transportation owner revenue in that next following formula year; or
  - (B) the Authority has, on the written application of the licensee, consented to such an increase in prices.
  
- (ii) If, in respect of any two successive formula years, the sums of the amounts by which the NTS transportation owner revenue has exceeded the maximum NTS transportation owner revenue are more than 6 per cent of the maximum NTS transportation owner revenue for the second of those formula years, then in the next following formula year the licensee shall if required by the Authority adjust its prices such that the NTS transportation owner revenue would not be likely in the judgement of the Authority to exceed maximum NTS transportation revenue in that next following formula year.

## 2. NTS transportation owner revenue (TOR<sub>t</sub>)

### (a) Principal formula

For the purposes of paragraph 1 of this condition the NTS transportation owner revenue in respect of formula year t (TOR<sub>t</sub>) shall be derived from the following formula:

$$\text{TOR}_t = \text{TOREVBEC}_t + \text{TOEXR}_t + \text{TORCOM}_t$$

where:

TOREVBEC<sub>t</sub> means the NTS TO revenue derived by the licensee in respect of formula year t from the sale of NTS SO baseline entry capacity and shall be derived from the following formula:

$$\text{TOREVBEC}_t = \text{REVBEC}_t - \text{DREVBEC}_t$$

where:

REVBEC<sub>t</sub> means the revenue derived by the licensee in respect of formula year t from the sale of NTS SO baseline entry capacity and shall be derived in accordance with paragraph [ ] of Special Condition C8D (NTS gas entry incentives, costs and revenues);

DREVBEC<sub>t</sub> means the revenue derived by the licensee in respect of formula year t from the on the day sale of NTS SO baseline entry capacity and shall be derived in accordance with paragraph [ ] of Special Condition C8D (NTS gas entry incentives, costs and revenues);

TOEXR<sub>t</sub> means the revenue derived by the licensee in respect of formula

year  $t$  in respect of charges levied on gas shippers and DN operators that is allocated to the NTS transportation owner activity and the revenue derived by the licensee in respect of formula year  $t$  from the sale of NTS baseline exit shipper capacity, NTS baseline exit flat capacity and NTS baseline exit flow flexibility and shall be derived in accordance with paragraph 2(a) of Special Condition C8E (NTS gas exit incentives, costs and revenues);

$TORCOM_t$  means the revenue derived by the licensee in respect of NTS TO activities provided by the licensee in respect of formula year  $t$  from charges levied on gas shippers and DN operators pursuant to Standard Special Condition A4 (Charging–General) or payments made by the licensee other than revenue earned by the licensee through (i)  $TOREVBEC_t$  and (ii)  $TOExR_t$ .

### 3. Maximum NTS transportation owner revenue (TOMR<sub>t</sub>)

#### (a) Principal formula

For the purposes of paragraph 1 of this condition the maximum NTS transportation owner revenue in respect of formula year t (TOMR<sub>t</sub>) shall be derived from the following formula:

$$\text{TOMR}_t = \text{TOZ}_t + \text{TOF}_t - \text{TOK}_t$$

where:

TOZ<sub>t</sub> shall be derived in the following manner:

- (i) In respect of the formula year commencing on 1 April 2007:

$$\text{TOZ}_t = \text{£[ ]} \times \left[ 1 + \left( \frac{\text{RPI}_0}{100} \right) \right]$$

- (ii) In respect of any formula year commencing on 1 April 2008 or on 1 April in any subsequent year:

$$\text{TOZ}_t = \text{TOZ}_{t-1} \times \left[ 1 + \left( \frac{\text{RPI}_t - X}{100} \right) \right]$$

where:

RPI<sub>0</sub> means the percentage change (whether of a positive or a negative value) in the arithmetic average of the retail price index published or determined with respect to each of the [ ] months from [ (both inclusive)] in the year [ ] and the arithmetic average of the retail price index numbers published or

determined with respect to the [ ] months from [ ] in the year [ ];

$RPI_t$  means the percentage change (whether of a positive or a negative value) in the arithmetic average of the retail price index published or determined with respect to each of the [ ] months from [ ] (both inclusive) in formula year t-1 and the arithmetic average of the retail price index numbers published or determined with respect to the same months in formula year t-2; and

X has the value of [ ]; and

$TOF_t$  means the NTS prescribed rates plus the NTS licence fees in respect of formula year t;

where:

NTS prescribed rates

means the amount of the charge deemed to be incurred in respect of the prescribed rates or equivalent tax or duty replacing them levied on the licensee in respect of its NTS transportation owner activity in respect of formula year t calculated as follows;

a) in the event that separate rating assessments are provided in respect of each Distribution Network transportation activity carried out by Transco plc or an affiliate of Transco plc, and in respect of the NTS

transportation owner activity carried out either by Transco plc or by an affiliate of Transco plc, the charge shall be the amount so assessed;

b) in the event that a separate rating assessment is not provided in respect of any of the Distribution Network transportation activities carried out by Transco plc or an affiliate of Transco plc and of the NTS transportation owner activity carried out either by Transco plc or by an affiliate of Transco plc, and that neither Transco plc nor its affiliates own any of the Scotland Distribution Network, the North of England Distribution Network, the Wales & the West Distribution Network and the South of England Distribution Network, but continue to own the North West Distribution Network, the East of England Distribution Network, the West Midlands Distribution Network and the London Distribution Network and the NTS, the total charge in respect of the licensee's NTS transportation owner activity shall be all of the prescribed rates or equivalent tax replacing them levied in respect of the licensee and its affiliates' NTS transportation owner activity in Scotland and Wales, and [29.2729%] of the prescribed rates or equivalent tax replacing them levied in respect of the licensee and its affiliates' NTS transportation owner activity in England and Distribution Network transportation activity in England; and/or

c) in any other circumstance the licensee shall perform attributions and allocations of cost between the NTS transportation owner activity, the Distribution Network transportation activity, and (where relevant) metering activities on a basis consistent with Special Condition C9 (Allocation of revenues and costs for calculations under the price control in respect of the NTS transportation owner activity and NTS system operation activity).

NTS licence fees means payments made by the licensee in respect of the NTS transportation owner activity under standard condition 3 (Payments by the Licensee to the Authority) in respect of formula year t; and

$TOK_t$  means the NTS TO revenue adjustment equal to the NTS TO over or under recovery in respect of formula year t-1 and shall be derived in accordance with paragraph 3(b) of this condition.

**(b) NTS transportation owner revenue adjustment ( $TOK_t$ )**

(i) For the purposes of paragraph 3(a) of this condition, the NTS TO revenue adjustment factor in respect of formula year t ( $TOK_t$ ) shall be derived in the following manner:

(A) In respect of the formula year commencing on 1 April 2007:

$$TOK_t = -£[xxx]$$

- (B) In respect of any formula year commencing on 1 April 2008 or on 1 April in any subsequent year:

$$\text{TOK}_t = (\text{TOR}_{t-1} - \text{TOMR}_{t-1}) \times \left( 1 + \frac{I_t}{100} \right)$$

where:

$\text{TOR}_{t-1}$  shall have the meaning given to that term in paragraph 2 of this condition where t equals t-1;

$\text{TOMR}_{t-1}$  shall have the meaning given to that term in paragraph 3(a) of this condition where t equals t-1;

$I_t$  means the percentage interest rate in respect of formula year t which is equal to, where  $\text{TOK}_t$  (taking no account of  $I_t$  for this purpose) has a positive value, the average specified rate plus 3 or, where  $\text{TOK}_t$  (taking no account of  $I_t$  for this purpose) has a negative value, the average specified rate.

#### **4. Reporting obligations**

- (a) Where the licensee publishes any statement or revised or amended statement as to its NTS TO transportation charges under Standard Special Condition A4 (Charging - General), the licensee shall not later than twenty-eight (28) days prior to the time of such publication provide the Authority with:
- (i) a written forecast of maximum NTS transportation owner revenue, together with its components, in respect of the formula year in which the change in such charges is to take effect and also in respect of the next following formula year; and
  - (ii) a written estimate of the maximum NTS transportation owner revenue, together with its components, in respect of the formula year immediately

preceding the formula year in which the change in such charges is to take effect unless a statement complying with sub-paragraph (d) below in respect of that first mentioned formula year has been furnished to the Authority before the publication of the proposed change in such charges.

- (b) If, within three months of the commencement of any formula year, the licensee has not published or effected any such change in its NTS TO transportation charges, the licensee shall provide the Authority with a written forecast of the maximum NTS transportation owner revenue, together with its components, in respect of that formula year.
- (c) Any forecasts as aforesaid shall be accompanied by such information as may be necessary to enable the Authority to be reasonably satisfied that the forecasts have been properly prepared on a consistent basis.
- (d) Not later than six weeks after the commencement of a formula year, the licensee shall send to the Authority a statement as to whether or not, in its opinion, paragraphs 1(a) and 1(b) of this condition apply in respect of that formula year and its best estimate of what  $TOK_t$  (as defined in paragraph 3(b) of this condition) is likely to be in that formula year.
- (e) The licensee shall send to the Authority, not later than three months after the end of each formula year, a statement showing the NTS transportation owner revenue in respect of that formula year that shall be certified by a director of the licensee on behalf of the licensee stating that the information is correct to the best of his knowledge and belief having made all reasonable enquiries.
- (f) The statement referred to in paragraph 4(e) of this condition shall be accompanied by a report from appropriate auditors that, in their opinion, that statement fairly presents the NTS transportation owner revenue in accordance with the requirements of this condition.

**5. Disapplication of the NTS transportation owner activity revenue restriction**

- (a) The NTS transportation owner activity revenue restriction conditions shall apply so long as this licence continues in force but shall cease to have effect in such circumstances and at such times as are described in paragraphs 5(b) to 5(g) of this condition.
- (b) The NTS transportation owner activity revenue restriction conditions shall cease to have effect (in whole or in part as the case may be) if the licensee delivers to the Authority a disapplication request made in accordance with paragraph 5(c) of this condition or notice is given to the Authority by the licensee in accordance with either paragraph 5(f) or paragraph 5(g) of this condition.
- (c) A disapplication request shall:
  - (i) be in writing addressed to the Authority;
  - (ii) specify the NTS transportation owner activity revenue restriction conditions (or any part or parts thereof) to which the request relates; and
  - (iii) state the date (being not earlier than the date referred to in paragraph 5(e) of this condition) from which the licensee wishes the Authority to agree that the conditions shall cease to have effect.
- (d) The licensee may withdraw a disapplication request at any time.
- (e) Save where the Authority otherwise agrees, no disapplication following delivery of a disapplication request pursuant to paragraph 5 of this condition shall have effect until a date being the earlier of:
  - (i) not less than 18 months after delivery of the disapplication request; and
  - (ii) 31 March [2012].

- (f) If the Authority has not made a reference to the Competition Commission under section 24 of the Act relating to the modification of this condition or the part or parts thereof specified in the disapplication request before the beginning of the period of 12 months which will end with the disapplication date and the licensee has not withdrawn the disapplication request, the licensee may deliver written notice to the Authority terminating the application of this condition or the part or parts thereof specified in the disapplication request with effect from the disapplication date or a later date.
- (g) If the Competition Commission makes a report on a reference made by the Authority relating to the modification of this condition or the part or parts thereof specified in the disapplication request and such report does not include a conclusion that the cessation of such revenue restrictions in this Special Condition, in whole or in part, operates or may be expected to operate against the public interest, the licensee may within 30 days after the publication of the report by the Authority in accordance with section 25 of the Act deliver to the Authority written notice terminating the application of this condition or the part or parts thereof specified in the disapplication request with effect from the disapplication date or later.