



*Promoting choice and
value for all customers*

Gas transporters, shippers and
interested parties

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30 March 2007

Dear Colleague,

**Decision letter on the regulation of Independent Gas Transporter (IGT)
licence holders as affiliates of existing licensees**

1. On 26 February 2007 Ofgem published a consultation letter¹ setting out our proposed approach to the treatment of Independent Gas Transporters (IGTs) affiliated to Gas Distribution Networks (GDNs). The consultation followed on from an IGT application Ofgem received from Fulcrum Pipelines², an affiliate of a Gas Distribution Network (GDN) and from a similar consultation conducted on affiliate Independent Distribution Network Owners (IDNOs) last year.³
2. The February 2007 letter recommended that the approach implemented for affiliated IDNOs, where an affiliate IDNO is treated as part of the host Distribution Network Operator (DNO) for the purposes of the DNO's price control, should not be extended to affiliate IGTs. We also considered that the adoption of any further provisions on affiliate IGTs would not be necessary.
3. This letter summarises the views of respondents to the consultation letter and sets out our views behind Ofgem's decision.

Respondents' views

4. Ofgem received five responses to the consultation letter, and all non-confidential responses can be found on the Ofgem website www.ofgem.gov.uk under the IGT Regulation area of work.

1 Regulation of Independent Gas Transporter (IGT) licence holders as affiliates of existing licensees.

2 Today Ofgem published a notice under Section 7 (5) of the Gas Act 1986 proposing to grant an Independent Gas Transporter (IGT) licence to Fulcrum Pipelines.

3 156/06 – Decision letter on regulation of independent electricity distributors: affiliates of existing licensees and price control issues, August 2006.

5. Two of the respondents positively supported Ofgem's recommendation not to extend the approach for IDNO affiliates to IGT affiliates, or to the adoption of any further provisions. One respondent did not express a view one way or the other about the approach but accepted that on past precedent it would be potentially unfair to reject future applications from affiliated IGTs. Two respondents did not support the proposed approach.
6. There was some agreement with Ofgem's view that the level and established nature of new connections in the IGT market compared to the IDNO market justified a different regulatory approach for their respective affiliates. Although one respondent noted that competition in gas connections should not be judged on market share alone as this took no account of the degree of transparency and openness in the bidding process. They added that more research of the connections market by Ofgem could facilitate a better understanding of the bidding process.
7. One respondent also expressed support for Ofgem's view that the existing provisions in the licence condition and competition law powers are sufficiently robust to address potential discrimination and competition concerns that could arise from an affiliated IGT. They pointed to the GDN's licence obligation under Standard Special Condition A6: Conduct of Transportation Business, as an example of existing licence provisions designed to safeguard against anti-competitive behaviour arising from an affiliate IGT. SCA6 obliges the licensee not to give its related undertaking (e.g. an affiliate IGT) any preferential or discriminatory treatment which could be used to exploit potential customers.
8. One respondent did not support Ofgem's recommended approach as they deemed the provisions to guard against market abuse were inadequate. They considered that the high burden of evidence required to prove anti-competitive behaviour made it very difficult to make a successful case under competition law or for licence breach. This they considered was due to the difficulty in obtaining such evidence especially in cases involving affiliates.
9. The same respondent also provided comment on monitoring the interaction between affiliates in the event that Ofgem's approach is adopted. They requested that the IGT and its affiliate GDN should be able to demonstrate to Ofgem their ability to operate on an arms length basis so that an IGT is able to function as a stand alone business.
10. The second respondent to oppose Ofgem's approach did so because they considered that the treatment accorded to licensed network operators should be consistent.

Ofgem's decision

11. Having given due consideration to respondents' views we have decided that the regulatory approach taken for affiliated IDNOs should not be extended to affiliated IGTs. We also maintain the view that extra provisions should not be adopted on affiliated IGTs. The reasoning behind this decision is set out in the consultation letter.
12. We have given further thought to the monitoring that is necessary in order to ensure that the IGT affiliate does not receive any preferential or discriminatory advantage from the GDN licensee. We expect to discuss with the GDN in particular the way in which the duties and tasks of the compliance officer (required as part of Standard Special Condition A34) can be carried out to give best effect to these concerns

13. As we stated in the consultation letter we reserve the right to reconsider this decision if we have reason to believe that the actions of the GDNs with respect to affiliated IGTs are not serving the best interests of customers.

14. If you have any questions to the points covered in this letter, please contact Indra Thillainathan on 020 7901 7294.

Yours sincerely,

Joanna Whittington
Director
Gas Distribution