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Dear Sir

**Response to: Update on competition in connections market review: issues limiting effective competition**

Thank you for the opportunity to comment on your recent update document of 7<sup>th</sup> October 2014.

GTC operates the licensed electricity distribution businesses of The Electricity Network Company Limited (ENC) and Independent Power Networks Limited (IPNL). Both of these licensee businesses operate as independent electricity distributors (IDNOs) providing and operating last mile networks which in turn connect to DNO distribution systems.

In competing in the connections market we experience first-hand and on a daily basis the behaviours, systems and processes of all the incumbent DNOs. We have already provided a detailed response to your open letter of the 24 June 2014, "*Competition in electricity distribution connections - call for evidence*". In that response we provided detailed examples of where we experience issues with DNOs. Our files and systems containing backing evidence were made available to Ofgem so that they could validate the issues we highlighted. We would welcome Ofgem to our offices once again to review this evidence first hand if this would be useful.

Since our original response we have provided Ofgem with further examples of the frustrations faced by competitors on a daily basis. These examples align with the areas that Ofgem has identified as presenting barriers to competition.

We think Ofgem has more than sufficient information to identify DNO policies and behaviours that are restricting or distorting competition. Also, we think that DNOs have had more than sufficient opportunity to implement policies and processes to better facilitate competition in connections. The competition test process and the responses Ofgem has received to its call for evidence provide sufficient evidence to allow Ofgem to take action without further delay.

Standard Licence Condition 19 of the distribution licence requires that licensees, in providing non-contestable connection services, must not discriminate between any business of the licensee (including any affiliate or related undertaking) and the business of any other person. We think the evidence provided to Ofgem demonstrates that that licensees have not complied with this obligation and as a consequence have restricted, distorted and prevented

competition from connection providers. Therefore, we think Ofgem should consider using its concurrent powers under the Competition Act 1998 rather than other Regulatory remedies.

Ofgem has requested that each DNO submits an action plan by 4 November 2014. We ask that these responses be published on the Ofgem website as soon as practicable to allow customers and competitors to review them and provide feedback.

Whilst it is essential that DNOs develop detailed plans to address the relevant issues, these should not be a substitute for Ofgem taking action using their Competition Act powers against DNO failures to date.

We believe that publishing DNOs plans will be helpful; however, each plan will need to be supported by effective monitoring and controls. These plans need to be effective and they must not be just the minimum to escape further action by Ofgem. We ask Ofgem to set out the actions they will take should DNOs fail to deliver on their promises.

We think that the DNOs' plans need to be:-

- Comprehensive, setting out in detail the actions they will be taking to open the market.
- Aligned to meet the requirements described in the MCCG presentations and deliver the service that the CNA prescribed in 2011.
- Time bound. We do not believe there are any good reasons for any actions to take more than three months to be implemented.

Overall the plans must clearly show that effective delivery will lead to a connections market where competitors can deliver a timely and cost effective service, free from undue interference or delays caused by DNO behaviours. When the gas market was reviewed, challenging timescales for change were set out under the improvement notice and the gas industry responded and met these targets.

We look forward to the next stage and trust that Ofgem will deal with any anti-competitive behaviour and practices that it discovered over the last few months.

Yours sincerely

Mike Harding  
Head of Regulation

## **Appendix 1 GTC Response to Ofgem questions**

**Question 1: Please let us know if any of our issue descriptions do not adequately reflect your experience of the market.**

The points identified by Ofgem reflect the issues we experience on a daily basis.

At the MCCG seminar, the role that the NERS should play in the accrediting of individuals and organisations, and in assuring the quality of works was discussed. This was illustrated with GIRS which has been successfully used in the gas industry for many years.

We think NERS offers an independent framework that could be used to great effect within the electricity connections industry to:

- Undertake accreditation of individuals and organisations
- Assess and assure work carried out by ICPS or DNOs' own businesses.
- Identify poor performance issues, and where appropriate, issuing improvement notices; or in the case of continued breaches and failures removal of accreditations.

Using such an independent organisation would help DNOs to demonstrate that they are not distorting competition in the provision of connections

We have provided recent experiences of DNO behaviour. In some cases we consider DNO behaviour has regressed since Ofgem applied its competition tests. This is an obvious concern given that the current debate is on making enduring improvements. For any solutions proposed by DNOs in their plans there needs to be a monitoring mechanism to ensure that once implemented, they stay implemented. Clear action from Ofgem should be considered where DNOs regress from previous improved positions.

### *Unmetered supplies*

This is an issue that relates to the management and trading of unmetered supplies. A role undertaken by the distributor as UMSO. Although not directly related to the new connections process, it does impact on competition in connections. This is because IDNOs have to create separate UMS inventories which must be traded separately from those on DNO networks. We are advised that this results in higher supply charges for the customer. As a consequence some local authorities have threatened to not adopt street furniture connected to IDNO networks. However, we note that DNOs are willing to incorporate inventories of UMS apparatus connected on private networks in the overall customer's inventory for their DSA (e.g. highway networks, landlords' supplies). Some DNOs are unsupportive of offering such services for IDNOs. We believe the DNOs' approach is unduly discriminatory and could distort competition. This is an area we have discussed with DNOs and Ofgem over the last few months.

**Question 2: Please provide comments on the solutions that stakeholders have suggested dealing with the issues that have been identified. Let us know if you have other ideas.**

We have reviewed the possible solutions identified in each of the areas raised and have made comments against these points. We are happy to meet to discuss these in more detail if this would assist in the understanding of the responses made.

Below we provide responses to the areas highlighted by Ofgem in their recently published document. For ease we have shown below a summary of our responses to indicate our support or otherwise to the possible solutions suggested.

**Summary of the areas identified by Ofgem**

*Issue A The DNO's level of control over the connections process*

- The NERS process needs to be modified to ensure quality is independently reviewed and maintained. This needs to cover installation and Monitoring as well as design approval and construction.
- Design approval process needs to be managed through the NERS process in the same way that the Gas model operates.
- The DNO requirement for link-boxes needs to be removed.

*Issue B The customer's experience*

- DNO involvement needs to be removed from the customer's experience of obtaining a connection where ever possible.
- DNO's need to ensure that a customer can change to a competitor as seamlessly as possible.
- Customers must be allowed to contract with a competitor without the need to engage with the DNO for construction works.

*Issue C The impact of regulatory regimes and requirements*

- Most DNOs have the processes in place to cover off legal (land rights) issues adequately.
- Best practice must be used across the industry.
- Partial funding of reinforcement distorts competition and needs to be resolved through work with DNOs, Ofgem and competitors.

*Issue D Transparency of pricing*

- DNO's need to be transparent with their pricing, by providing detailed breakdown of costs and assumptions.

*Issue E Competition not viable for certain types of connection*

- The removal of barriers that are currently in place; i.e. link-boxes and current design approval regime are preventing competition flourishing in certain areas.

The detail supporting this summary is shown in the following pages. All of the changes we have proposed should be implemented without delay. We note some DNOs have already been taken action, for example the removal [X] of the blanket requirement for link boxes.

## **Issue A - The DNO's level of control over the connections process**

### **The nature of DNO accreditation regimes**

We support proposals for an independent accreditation scheme to operate across all DSAs. Accreditation in one DNO's DSA should be transferable across to all DNOs. We think NERS offers the appropriate vehicle to coordinate and manage the accreditations process. This should be operated independent of DNOs. Further, work may be required to strengthen the NERS process. However, this work could (and should) be achieved quickly.

GIRS has operated successfully in the gas industry for many years. In the gas industry:

- GIRS process the GDNs together with the IGTs combine as a group (GIRSAP) to appoint a technical auditor (LRQA) who operates independently to monitor connection technical quality.
- Personal technical competences to make the final connection are logged at each GDN, but the logging data is shared between GDNs such that the assessment of a person is only undertaken once.
- In the gas market the ability to self-select the point of connection is allowed for by the GDNs load versus pressure table (NP14).

We think similar approaches can be applied in respect of electricity connections. By having independent processes DNOs will be able to better demonstrate that they are not behaving in an unduly discriminatory manner or distorting competition in connections.

The DNOs may still have a requirement to review NERS audits and get involved in the process. However, this would be far reduced and assist them in reducing their overall costs for connections.

### **How DNOs determine the Point of Connection (PoC)**

We do not support the use of a third party to determine points of connection as this will just increase costs and lead to increased timescales.

Determining a Point of Connection needs to be considered along with the nature of the proposed development. We believe the self-serve model offers a more effective and cost efficient approach.

DNOs have methods of sharing network details between their own teams that operate remote from offices, and are more than capable of sharing these with ICPs so that they can make the overall assessment of the best place to connect and what additional works need to be undertaken.

Even some of the claimed more difficult issues raised, like interactivity and reinforcement, can be overcome so that the DNOs only have to see the information on secured projects rather than multiple enquiries for point of connection offers. This will allow the DNOs to dramatically reduce their staffing levels on competitive work and allow their staff to focus on network management.

[3<] has made a good start in putting together a matrix that can be used to determine load based on a number of criteria's. Whilst this is useful it needs to be developed further and shared across all DNO's so that they can all produce a useful way of determining network capacities that can be used.

Whilst we accept that there will be some circumstances where the DNO will need to determine the point of connection; we think this will only apply to a limited number, with the majority being capable of being assessed under the self-serve approach. A similar approach has been operating successfully in the gas industry for many years.

### **The way in which DNOs approve connection designs**

We think the NERS process offers a mechanism for accrediting ICPs and their designers to design networks that are to be adopted by the licensee.

A NERS accreditation mechanism will reduce costs and timescales and improve customer service significantly for the customers of the ICPs. To facilitate the solution DNOs should produce a matrix of standard designs for different connection configurations. These could then be made available to NERS accredited connection providers.

GTC are currently working with most DNOs to pre-approve substation designs as this has been identified as one of the key areas that the customer needs information to ensure that a high voltage connection can be completed in a timely manner.

### **The requirement for IDNOs to fund and install link boxes**

We do not think that there is a need for link boxes between an IDNO LV network and a DNO LV network in the majority of cases. DNOs do not install link boxes where they are to own and operate the downstream network. We believe that such imposition by the DNO may result in charges that are in excess of the minimum scheme.

We note that some DNOs have started to change their position on this requirement:

- Where a DNO is insistent on its requirement for a link box we think the DNO should fund it. Some have already indicated that they will pay for the installation. However, in many cases link boxes are not necessary and are likely to cause increased safety issues and reduce the reliability of the network.
- [X] have confirmed that the blanket requirement for link boxes in their RSMs was removed from the 1 November 2014, in those exceptional circumstances where they believe a link box is required they will fund the investment.
- [X] are pushing the responsibility onto the IDNO to determine and justify if and when the box is required. This is an approach we support

Where the requirement for link boxes are dispensed with the ownership boundary between DNO and IDNO would be at the point of connection; i.e. the joint. The specification for final connection joint could be provided and published by DNOs.

### **How DNOs inspect and monitor new assets provided by their competitors**

We are supportive of audit mechanisms that assure that standards applied to ICPs are consistent with those applied by DNOs to their own work. One of the issues we face in the competition in connections market is that DNOs appear to apply higher hurdles to ICPs than they do to their own business. Having a common approach operated under NERS would ensure an even handed approach.

This will significantly reduce the DNOs requirements for auditors and should assist in reducing their overall costs.

In the gas market Inspection and Monitoring is managed predominately by the appointed auditors with the GDN's only getting involved as an exception rather than on a regular basis.

### **Inconsistent application of planning and design standards**

Many of the issues associate with the inconsistent application of policy and design standards are removed if the self-serve options for accredited parties are adopted.

The key requirement is for DNOs to put in place and publish (in a transparent manner) design policy and standards which are in a form that can be applied consistently across their DSA by ICPs or by the DNO's own business.

Whilst this will not resolve all situations – there will be some designs that will require subjective judgment - it will significantly improve the situation from the status quo.

In the gas market Transco found (in the late 1990s) that connection policy was not recorded in a single place but rather through different policies, procedures and systems. To improve consistency Transco undertook a project to develop a single reference document called the Connections Policy Manual. Ofgas then required the application of the policies and procedures to be ISO accredited.

Whilst ISO accreditation could be required of DNO policies, we think it may be more appropriate for such documents to be accredited under NERS, with DNOs being required to maintain accreditation to demonstrate consistent application of their own policies.

## **Issue B – The customer's experience**

### **Customers do not know they can use alternatives**

We agree DNOs could do more to ensure customers are aware of the competitive market. It is important that DNOs advise enquirers by return how they can obtain competitive quotations rather than include such information in their quotation that may mean the customer has insufficient time to get competitors quotations.

However, it may also help if details of accredited ICPs were readily accessible on Ofgem's website and in Ofgem guidance documents about competition in connections.

Most DNOs are establishing more information and documentation on their websites to make parties aware that competition is possible. However, this is dependent on the customer accessing the right part of the website, even then customers may not know who they can contact for a competitive quote. Another way of raising awareness would be for DNO emails or letters that are sent out to have strap lines confirming that there is competition. This could also be added to telephone messages when customers are waiting to be connected.

### **Customers are reluctant to use alternatives**

We do not believe competitive markets need independent agencies to help customers make choices. We think such an agency will cause confusion, additional hand offs, time delays and additional costs to the process.

We have experienced reluctance from some developers because they have experienced delays and complications brought about by DNO intervention. The fundamental issue with the market is that the DNOs still have too much control over the process. No ICP can confirm an energisation date to a customer at the outset and in most areas they can only confirm that actual date the day before or even on the day. This is an unacceptable degree of control by DNOs and must be changed.

Only when an ICP has total control over the service and solution they are providing will the customer have confidence in using them.

We propose the best way this can be resolved is for the DNOs to look at the gas industry model and establish a similar self-serve model in electricity.

### **Customers that want to use a competitor find difficulty in accepting just the non-contestable part of the DNO's quote**

We agree that the use of transferable quotes is a good solution to this issue.

The challenge is to ensure that the customer is not confused by these quotes and that they are consistent in approach across all DNO areas. Customers do not work to DNO boundaries. Equally DNOs' drafting of quotations needs to be carefully thought out so that they do not put undue confusion or concern into customer's thinking. For example, adding a

claim that if they use an ICP the costs for the non-contestable element could be higher will lead customers to believe that the overall cost may be more expensive. This will deter customers talking to ICPs as they may make unconscious conclusions based on the wording of the quote. In addition these quotes need to be able to work for an ICP irrespective of whether they are going to have the DNO or an IDNO adopt the network.

## **Issue C - The impact of regulatory regimes and requirements**

### **The licensees' statutory powers**

We agree that the lack of statutory powers, particularly in respect of street works, can place ICPs at a disadvantage. Typically this is only an issue where the ICP is undertaking 'off-site' works in the public highway.

We believe that these arrangements can only be amended with changes to street works legislation. Whilst it may be possible to develop arrangements where an ICP operates under a relevant licensee's powers, arrangements would need to be in place to ensure that licensees do not pick up liability for the work they are not responsible for.

We note that although this issue arises in the gas market, the removal of the other barriers to competition has enabled the market to open to a much greater extent than it has for electricity. We therefore consider this issue to be lower priority than all others in particular the self-service model.

Issues on the use of the DNOs' easements and wayleaves to facilitate competition in connections are resolved adequately by most (but not all) DNOs at the present time.

### **The DNOs and IDNOs' licence requirement to provide an emergency response service**

We agree that the emergency service should be coordinated and provided by the DNO operating in its DSA. This should be provided on a costs reflective basis to IDNOs. We understand that some DNOs who refuse to offer such services to IDNOs will provide such services in respect of private networks. We believe that Ofgem will consider this as unduly discriminatory.

Many of the calls IDNOs receive for loss of supply relate to loss of supply of the upstream DNO network. This is even more so the case when there are weather related incidents causing loss of supply. In such instances IDNOs are reliant on DNOs for information to pass on to customers. A central service would address many of the problems this causes.

Some DNOs consider that providing such emergency services would fall under the licence description of De Minimis Business, and as a consequence they would not be able to recover their costs without breaching the limits allowed in their licences (when considered in aggregate of other revenues falling under this definition). We are not sure we share DNOs views on this. However this is an area where Ofgem could provide clarity and a remedy.

We note that [X] have committed to provide emergency services across their whole footprint from early in 2015.

### **The ability of DNOs to provide part-funded connections**

We think that where a DNO provides a subsidy for works that it undertakes (which is recovered through DUoS charges to the wider DNO customer base) and does not offer the same amount of subsidy to a competitor it is behaving in an unduly discriminatory manner with the effect that competition is distorted.

We do understand why providing such subsidy to a competitor undertaking the same work is unduly complex. We have been working with [X] on this matter and we think that there is a solution that can be used to allow this area to operate effectively. We are planning some



trials in terms of costing and we would like to share this work with Ofgem in the next few weeks. These trials should help shape the possible solution for this issue.

#### **Issue D – Transparency of pricing**

Contestable works are subject to competitive tendering so the need for transparency is not essential. Additionally, we understand that detailed cost data could compromise a DNOs position in a truly competitive market. However, the same is not true for non-contestable elements of work. Here our concerns are that the charges may not be cost reflective, or that contestable costs (direct and indirect) may be unduly recovered through the non-contestable charge.

#### **Issue E – Competition not viable for certain types of connection**

We agree that competition is not viable for some smaller developments. This is as a consequence of the administrative burdens and hurdles put in place by DNOs. The requirement for link boxes is also a significant factor.

We think that increasing the scope of contestable activities and the introduction the self-serve process is the key to allowing these markets to open up in a similar way to the gas market. With gas there is a thriving market for smaller connections but none of the players who are involved in this can risk undertaking electricity as well as they would not be able to deliver for the customer.