

Guidance on the regulatory regime for gas storage facilities in Great Britain (version 2)

Guidance

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Overview:

Since 3 March 2011 gas storage facilities have had to comply with the EU Third Internal Energy Package (the Third Package), in particular the directly applicable provisions of the Gas Regulation and the relevant provisions of the Gas Directive as transposed into domestic legislation.

Ofgem is responsible for ensuring compliance with the requirements of the Third Package pertaining to gas storage.

This document sets out our current views on certain issues relating to third party access, provides guidance on the requirements on unbundling and the management of commercially sensitive information, and summarises Ofgem's powers to monitor and enforce compliance. This guidance document will apply until such time as it is revised. This is an update to our guidance from December 2011. This update does not make changes to our high level position on nTPA arrangements, but instead provides some minor clarifications to our guidance in certain areas.

Context

Gas storage plays an important role in facilitating the efficient functioning of the energy market in Great Britain (GB). Primarily, gas storage is used to provide an important source of flexibility that is needed to address differences in non-storage sources of supply and demand. Gas storage contributes to security of supply and competition in the market.

The EU Third Internal Energy Market Package (the Third Package) came into force on 3 September 2009, and comprises Directives and Regulations on gas and electricity. Since 3 March 2011, the Regulations have been directly applicable. Since 10 November 2011, the Directives have been transposed into UK law. A number of aspects of this legislation are applicable to gas storage facilities in GB. Ofgem is responsible for monitoring and ensuring compliance with the requirements of the Third Package pertaining to gas storage.

In November 2010 we consulted on Ofgem's preliminary views on compliance with negotiated third party access (nTPA) requirements for gas storage, and published version 1 of this guidance in December 2011.

Associated documents

- [Guidance on the regulatory regime for gas storage facilities in Great Britain](#), Ofgem, 5 December 2011
- [Consultation: Guidance on the Third Party Access regulatory regime for gas storage facilities in Great Britain](#), Ofgem, 3 November 2010.
- [Open Letter: Preliminary views on the Third Party Access \(TPA\) regulatory regime for gas storage facilities](#), Ofgem, 18 May 2010.
- [DIRECTIVE 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC.](#)
- [Regulation \(EC\) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation \(EC\) No 1775/2005.](#)
- [Final ERGEG Guidelines for Good TPA Practice for Storage System Operators \(GGPSSO\)](#), ERGEG, 2 March 2005 as updated in July 2011.
- [Amendment of the Guidelines of Good Practice for Third Party Access \(TPA\) for Storage System Operators \(GGPSSO\)](#), CEER, 14 July 2011.
- [ERGEG Guidelines for Good Practice on Open Season Procedures \(GGPOS\)](#), ERGEG, 21 May 2007.
- [Gas Storage Minor Facility Exemptions Open Letter](#), Ofgem, 16 June 2009.
- [Electricity and Gas \(Internal Markets\) Regulations 2011](#)

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Executive Summary

In this document we set out our current views on how we may be minded to interpret the provisions of the Third Package pertaining to gas storage. This guidance is an update to our 2011 version. This update does not make changes to our high level position on nTPA arrangements, but instead provides some minor clarifications to our guidance in certain areas. Our guidance aims to provide greater clarity around the operation of the third party access framework and associated measures. This potentially has wide ranging benefits. For potential investors, clarity around the regulatory framework should reduce uncertainty which otherwise may deter investment or increase the cost of capital. For gas storage customers, by supporting more transparent and non-discriminatory access arrangements, guidance can promote more efficient use of existing and planned storage facilities. For end consumers, benefits may accrue from increased security of supply and increased competition as gas storage capacity is brought to the market.

We are also providing guidance in order to reduce the potential risk of non compliance with the legal framework. The negotiated third party access (nTPA) framework in GB provides owners of gas storage facilities with significant scope for developing the access arrangements that best meet the needs of their customers (and end consumers). This document provides more detail regarding the measures that storage facility owners could consider in relation to providing access and/or meeting other regulatory requirements.

Some of the guidance in this document also applies to storage sites with a minor facilities exemption – this is indicated in the relevant places. Under the Third Package, the default approach for any new storage facility is nTPA, so the full guidance would apply to them. We have therefore taken care to ensure the guidance is not unduly onerous and appropriate for new facilities.

This document also sets out some good practice safeguards that any market player (the owner of a gas storage facility and any related undertakings) with 'Significant Market Power' (SMP) may want to consider in order to reduce the potential risk of non compliance. We consider that any market player with SMP is more likely to have the ability and the incentive to discriminate and restrict access to storage, to the potential detriment of consumers. In this guidance we also explain our current approach to assessing SMP.

Key features of the guidance

The key features of our guidance on the regulatory regime for gas storage facilities in GB are the following:

Capacity allocation

Owners of gas storage facilities in GB should offer at least the maximum technical storage capacity from their facility(s). We consider that market based mechanisms

such as auctions and open seasons increase the likelihood of the allocation mechanism meeting the requirements of the Gas Regulation.

Auctions are particularly recommended for allocating standard services and may help market players with SMP to reduce the risk of non compliance with the discrimination requirements. Alternatively, if not sold via auction, services must be offered on a non-discriminatory basis (which would require contracts to be on equivalent terms) and storage operators must have transparent capacity-allocation mechanisms.

Main commercial conditions and service mix

We would expect storage facility owners to conduct open and transparent processes for consulting the market when developing (or amending) their main commercial conditions. We consider that storage facility owners are responsible for determining the appropriate level of consultation/market testing.

However, we would expect more extensive consultation/market testing processes in the case of market players with SMP and/or when the changes being proposed to the main commercial conditions or to the services offered are significant. In setting their mix of services, storage owners are required to offer long and short term services, firm and interruptible services, and bundled and unbundled services.

Unbundling and the management of commercially sensitive information

We would expect storage owners that are subject to nTPA to be legally unbundled from relevant affiliates. We would also expect them to ensure their facility is operated independently and in a way that protects commercially sensitive information through separation of managers and senior officers, and by implementing and monitoring appropriate measures (including a code of conduct) on staff. Owners are required to publish a compliance report on an annual basis, and to send a copy to Ofgem.

We would expect all storage owners, even those with a minor facilities exemption, to manage commercially sensitive information appropriately.

Monitoring and enforcement

We will adopt a mix of monitoring and industry engagement to determine whether or not owners of GB gas storage facilities are complying with the relevant regulatory requirements. The relevant monitoring and enforcement provisions of the legislation transposing the Third Package into GB law enable us to engage in a mix of proactive market surveillance and to investigate and take appropriate action against any storage facility owner where there is reason to believe that the owner is not complying with the relevant regulatory requirements.

This guidance states our views on nTPA arrangements for gas storage facilities in GB; however, we reserve the right to amend it in light of future developments. We may also be minded to take a different approach to that indicated in the guidance particularly where the facts of the matter in question are novel or complex.

1. Introduction

Approach to guidance

1.1. This guidance is an update to our 2011 version. This update does not make any changes to our high level position on nTPA arrangements, but instead provides some minor clarifications to our guidance in certain areas.

1.2. In response to queries from industry stakeholders we committed to providing guidance on how we may be minded to interpret the provisions of the Third Package pertaining to gas storage.^{1,2}

1.3. We intend that our guidance provide greater clarity around the operation of the regulatory framework for storage facilities. This potentially has wide ranging benefits. For potential investors, clarity around the regulatory framework should reduce uncertainty which otherwise might deter investment or increase the cost of capital. For gas storage customers, by supporting more transparent and non-discriminatory access arrangements, guidance can promote more efficient use of existing and planned storage facilities. For end consumers, benefits may accrue from increased security of supply and increased competition as gas storage capacity is brought to the market.

1.4. Storage facility owners³ are responsible for developing access arrangements that are compliant with the Gas Regulation and the relevant provisions of the Gas Directive, as transposed into the Gas Act 1986 (the Gas Act). We recognise that nTPA provides storage facility owners with significant scope to develop the access arrangements that will meet the needs of their customers (and end consumers). Given this, an objective of providing this guidance is to assist storage facility owners in developing access arrangements that are likely to comply with the relevant legislation.

1.5. Some of the guidance in this document also applies to storage sites with a minor facilities exemption – this is indicated in the relevant places. Under the Third Package, the default approach for any new storage facility is nTPA so the full

¹ For the purposes of this document, the Third Package means [Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC](#) ('Gas Directive') and [Regulation \(EC\) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation \(EC\) No 1775/2005](#) ('Gas Regulation').

² [Corporate Strategy](#), Ofgem, 18 December 2014.

³ In relation to a storage facility, UK law defines 'owner' as a person occupying or having control of the facility. Although the Gas Regulation refers instead to the term 'storage system operator' we have used the UK term 'owner' for the sake of consistency.

guidance would apply to them. We have therefore taken care to ensure the guidance is not unduly onerous and appropriate for new facilities.

1.6. Further, our guidance suggests some good practice safeguards, particularly where a market player has SMP. Any market player with SMP is more likely to have the ability and incentive to discriminate and restrict access to storage, potentially with detrimental effects on consumers. The good practice safeguards outlined in the guidance are designed to reduce these risks.

1.7. Whilst this document highlights our views on some of the issues to which the Authority is likely to have particular regard to when considering compliance with the legislation relating to access to storage facilities, it is by no means definitive or exhaustive. The objective of this document is to provide general guidance for storage facility owners and other market participants. We may also be minded to take a different approach to that indicated in the guidance particularly where the facts of the matter in question are novel or complex. We reserve the right to amend it in light of future developments.

Consistency with European guidelines

1.8. In developing our guidance, we have also taken into account relevant European guidelines, such as:

- The European Commission's Interpretative Notes on the Gas Directive in relation to Third-Party Access to Storage Facilities⁴ and
- The Council of European Energy Regulators' (CEER) Amendment of the Guidelines of Good Practice for Third Party Access (TPA) for Storage System Operators (GGPSSO).⁵

Structure of this document

1.9. In this document:

- Chapter 2 sets out our views on the issues relating to third party access arrangements
- Chapter 3 provides guidance on compliance with requirements on unbundling and management of commercially sensitive information and
- Chapter 4 summarises our powers and approach to monitoring and enforcement.

⁴ [Interpretative Note on Directive 2009/73/EC Concerning Common Rules for the Internal Market in Natural Gas, Third-Party Access to Storage Facilities](#), European Commission, 22 January 2010.

⁵ [Amendment of the Guidelines of Good Practice for Third Party Access \(TPA\) for Storage System Operators \(GGPSSO\)](#), CEER, 14 July 2011.

2. Third party access (TPA) arrangements

Chapter Summary

This chapter sets out our views regarding the measures that owners of GB gas storage facilities should consider in relation to meeting the requirements of the Third Package relating to Third Party Access (TPA) arrangements.

2.1. This chapter sets out our views on compliance with the provisions of the Third Package relating to capacity allocation and congestion management procedures, main commercial conditions and service mix, transparency and information sharing arrangements. In developing these views, we have taken into consideration stakeholders' feedback.

Access to gas storage and market power

2.2. We have taken the view that there may be cause for concern where any market player (the owner of a gas storage facility and any related undertakings) has significant market power (SMP)⁶. Any market player with SMP may have the ability and the incentive to discriminate and restrict access to storage, to the potential detriment of consumers. Restricting access to storage conflicts with the aim of the Third Package that access is provided on an objective, transparent and non discriminatory basis. Any market player with SMP may also face a higher risk of non compliance with the nTPA regime.

2.3. Given the level of competition in the GB gas market, particularly in relation to the diverse range of sources of supply, we do not currently expect there to be many cases of SMP. However, we consider it important that our guidance covers a spectrum of possibilities (both now and in the future) so as to be as comprehensive as possible.

2.4. There are a number of ways in which SMP could potentially be measured. Our view is that SMP in the gas market should be assessed based on:

⁶ Market power is, by and large, the ability of a market player to raise prices above a competitive level. In relation to gas storage, the market value of gas storage services is driven by the spread between prices at times of injection and at times of withdrawal. The owner of a storage facility will be successful in raising storage prices above some competitive level only if it can raise peak gas prices and/or lower off peak gas prices. Market power in the gas market could manifest itself in a market player withholding some of its storage capacity from the market in order to raise peak gas prices (as less storage is available to withdraw gas from) and/or reduce off peak prices (as less storage is available to inject gas into).

- structural measures of market power (primarily based on pivotality analysis)
- other relevant structural elements (such as demand elasticity) and
- a direct assessment of market outcomes (such as price outcomes)

2.5. We propose a 'hybrid approach' to assessing market power, based on the analysis of the factors above. We may also use other measures, such as market shares, as a supporting tool. This approach is consistent with the approach adopted by other authorities.⁷

2.6. Our view is that pivotality analysis should be used as the main structural measure of market power. Pivotality analysis identifies the market players that are 'pivotal' by using demand and supply data. When a market player is pivotal, total demand cannot be met from the total supply from all other sources of supply. Therefore, the market player will not face material competitive constraints for its pivotal volume of supply, and is therefore guaranteed a certain market share as a result of the lack of competing supply. The degree of a market player's market power may be assessed by looking at its pivotal volumes of supply (as a percentage of total demand) over a range of timeframes.⁸

2.7. We consider that a market player with a 'pivotal volume' in excess of 10% will be generally deemed to have SMP. A high volume of pivotal gas means there is a greater likelihood that the market player can significantly affect prices. We note that at pivotal volumes of in excess of 10%, the market player may be able to profitably affect prices across a broad range of elasticity of demand forecasts.⁹ Therefore, in our view it is highly unlikely that a market player with pivotality levels of in excess of 10% would not be deemed to have SMP. For pivotality levels below 10%, additional analysis may be required.

2.8. In addition, we consider that, for a market player to have SMP, it is likely that it would need to be pivotal for a sustained period of time.¹⁰

2.9. However, we note that the 'pivotal volume' test is a conservative test for market power, as it assumes competitive behaviour by all other players in the market. Hence, a pivotal volume test may underestimate a player's degree of market

⁷ See for example Ofcom's approach in its [Review of the wholesale broadband access markets – Consultation on market definition, market power determinations and remedies](#), published 23 March 2010.

⁸ A model of pivotality needs to take into consideration a range of timeframes because the substitutability of different sources of gas supply may vary over different timeframes.

⁹ For example, our analysis suggests that across the range of elasticity forecasts noted by the Competition Commission (CC) in its review of Centrica's acquisition of Rough in 2003 (ie, from -0.1 to -0.3), pivotality levels of in excess of 10% would appear to allow a market player to profitably increase prices.

¹⁰ This recognises that there may be instances where a market player's pivotality is transitory rather than sustained, eg as a result of a one off, short term shock (such as a pipeline outage or extreme weather), which might give less cause for concern, depending on the circumstances.

power. Therefore, it is possible that a market player may still have SMP even if its pivotal volume of gas is less than 10%.

2.10. As listed in paragraph 2.4, our proposed 'hybrid approach' to assessing SMP in the gas market also takes into account other relevant structural factors, alongside pivotality. These other structural factors include:

- elasticity of demand
- the market player's contracted position
- the market player's position across all related markets and
- evidence of supply side substitution.

2.11. Finally, the third element of our approach, ie direct assessment of market outcomes, involves observation of market prices and profits. In this case, the key question to consider will be whether the market player has the ability and the incentive to unduly affect market prices.

2.12. To aid stakeholders' understanding of our proposed framework for assessing pivotality, we have published an example of the pivotality model from our 2011 guidance.¹¹ Appendix 2 provides a high-level description of the model, including details of its key data inputs and assumptions. It also explains how to run the model and interpret results.

Market Players with SMP

2.13. In determining whether a storage facility owner should be classed as being part of a market player for the purposes of assessing SMP, we consider that the key test should be whether the market player (that has SMP) is able to control the behaviour or commercial/operational policy of the storage facility owner. Article 2(36) of the Gas Directive defines control¹² as:

- any rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:
 - ownership or the right to use all or part of the assets of an undertaking, or
 - rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

2.14. The definition of 'control' in the Gas Directive is taken from the EC Merger Regulation¹³ and should be interpreted accordingly.¹⁴

¹¹ https://www.ofgem.gov.uk/sites/default/files/docs/2011/12/gas-pivotality-model_0.xlsm

¹² 'Control' in the Gas Act has broadly the same meaning given in the Gas Directive.

¹³ [Council Regulation \(EC\) No 139/2004 of January 2004 on the control of concentrations](#)

2.15. We would expect that, where a market player with SMP is able to exercise decisive influence over the commercial and/or operational policy of a storage facility owner, that the latter should adopt the good practice safeguards proposed for market players with SMP. This way, the storage facility owner may reduce the potential risk of non compliance with the relevant requirements.

2.16. In terms of interpreting the concept of 'control', we also note there are useful definitions in the UK Merger Assessment Guidelines (MAG)¹⁵, a joint publication by the Competition Commission (CC) and the Office of Fair Trading (OFT), which has been adopted by the Competition and Markets Authority (CMA). Market participants may find these helpful. Ofgem has taken the view that, where a transaction enables the market player with SMP to 'materially influence' (as defined in the MAG) the commercial policy of a storage facility owner, then the storage facility owner should consider applying the suggested good practice safeguards. For example, provisions of paragraph 2.33 below apply, in addition to paragraphs 2.18 to 2.22 (which apply whether there is SMP or not).

Capacity allocation and congestion management

2.17. Article 17 of the Gas Regulation requires owners of gas storage facilities to make available the maximum storage facility capacity to market participants, taking into account system integrity and operation. There is not, however, a formal requirement to sell all capacity that is made available to the market. Storage facility owners are also required to implement and publish non discriminatory and transparent capacity allocation mechanisms, which provide appropriate economic signals for the efficient and maximum use of capacity and facilitate investment in new infrastructure. Further, the allocation mechanism should be compatible with the market mechanism including spot markets and trading hubs, be flexible and capable of adapting to evolving market circumstances, and be compatible with the connected network access systems.

2.18. In addition, storage facility contracts are required to include measures to prevent capacity hoarding in cases where there is contractual congestion. Under Article 17(3), storage facility owners must offer unused storage capacity on the primary market without delay¹⁶ and storage facility users wishing to re-sell their contracted capacity on the secondary market must be entitled to do so.

2.19. The requirements of Article 17 are supported by other provisions within the Gas Regulation including the requirement to offer services on a non discriminatory

[between undertakings.](#)

¹⁴ Recital 10 of the Gas Directive.

¹⁵ [Merger Assessment Guidelines](#), joint publication by the CC and the OFT, September 2010.

¹⁶ For storage facilities this must be done at least on a day-ahead and interruptible basis.

basis in Article 15(a), the information provision requirements in Article 19, and the requirements for the trading of capacity rights specified in Article 22.

The maximum storage capacity

2.20. Defining the maximum storage capacity is a complex issue. In practice, there will be a significant number of factors that storage owners will need to consider when determining the maximum storage capacity of the facility.

2.21. We would therefore expect that any quantification of the maximum storage capacity, and associated variations to it, be justifiable and fully consistent with the storage facility owner's technical parameters, operational processes, procedures and guidelines. Further, storage facility owners should keep records of such operating parameters and maintain associated documentation to enable them to retrospectively justify any determinations and declarations of the storage capacity of a facility.

2.22. In addition, in line with the requirements of Articles 19(2) and 19(4) of the Gas Regulation, we would expect that owners of gas storage facilities inform market participants of the maximum technical storage capacity of each of their facilities. We consider that storage facility owners should provide market participants with information on, and justification for, any material variations in the maximum storage capacity.

2.23. Where practicable, storage facility owners should make available information that assists market participants to understand the methodology used to determine the maximum technical storage capacity, and which parameters may cause this to vary.¹⁷

2.24. In the case of a dispute, we would expect storage facility owners to be able to demonstrate that they have been making at least the maximum technical storage capacity available to market participants. Under Article 20 of the Gas Regulation, storage facility owners are required to keep the relevant information for five years.

Operation of multiple facilities

2.25. We would not generally expect that the operation of multiple facilities would have a significant bearing on the ability of a storage facility owner to determine the maximum technical storage capacity it can make available to market participants. Our view is that storage facility owners should be capable of defining the maximum

¹⁷ Both Articles 19(2) and 19(4) require storage owners to make public information about the available capacity. The available capacity should be the residual between the maximum capacity and the capacity that has been contracted (19(2)) or that is being utilised (19(4)). Given this, market participants will require information about the maximum technical storage capacity.

technical capacity of each individual storage facility they operate, and then aggregate across them in order to determine the maximum technical capacity available for market participants.

2.26. In cases where a storage facility owner offers services utilising the combined capacity of more than one facility, our view is that the maximum capacity may be made available by reference to the group of facilities. In such cases, the storage facility owner must ensure that the access which is offered is equivalent to at least the maximum technical storage capacity. This means that the mix of services offered by the storage facility owner should exhaust the aggregate available capacity technically available across the group of storage facilities.

2.27. Given the requirements of Article 17 of the Gas Regulation requiring storage facility owners to be able to demonstrate that they are making the maximum capacity available to market participants, our view is that if a storage facility owner proposes to offer services that utilise the storage capacity of more than one facility, ie at portfolio level, that we would expect all facilities to be subject to the same regulatory arrangements.¹⁸ We believe this should make it easier for storage facility owners to demonstrate that they are making the maximum technical capacity available to market participants, and provide greater certainty to the market regarding the capacity that should be available on an ongoing basis. At the same time, we consider that this would reduce the scope for gaming of the regulation.

Allocation mechanisms – primary market

2.28. In general, we consider that market-based approaches to allocating capacity, such as auctions, lead to an efficient allocation of storage services. This is because auctions generally result in capacity being allocated to those customers who place the highest value on the capacity, as reflected in the ultimate auction price. Auctions may also make it easier for storage facility owners to demonstrate that the allocation process is free from discrimination. At the same time, auctions should provide storage facility owners with useful information on, eg demand levels for their services or customers' valuations of these, which should provide better signals for investment.

2.29. In light of the above considerations, we consider that using auctions to allocate capacity (particularly standard services) generally lowers the potential risk of non compliance with the Gas Regulation. However, storage facility owners may choose alternative capacity allocation mechanisms, provided these are equally objective, transparent and non discriminatory.

¹⁸ For example, a storage owner could operate one facility that has a minor facility exemption and another one that must comply with the nTPA requirements. In such a case, the requirement to offer maximum capacity would apply only to the facility operated under the nTPA regime. If the storage owner offers storage services that do not refer specifically to the facility operated under nTPA, it will be difficult for the storage facility owner to demonstrate that the maximum technical capacity has been offered to the market.

2.30. For example, in the case of new investment, open season procedures may provide an acceptable alternative to auctions, ensuring comprehensive market consultation and non-discriminatory capacity allocation. Prospective investors can refer to ERGEG's (non-binding) Guidelines for Good Practice on Open Season Procedures (GGPOS)¹⁹ for further information and guidance.

2.31. In cases where alternative allocation mechanisms are used, we would expect that storage owners would be able to demonstrate, to our satisfaction, that the chosen allocation mechanism delivers similar degrees of objectivity, transparency and non discrimination. Some of the factors owners may want to consider are ensuring that:

- all market participants are aware of how the available capacity is to be offered to the market, ie some form of public notification that includes information about the types of services that are available and the timing for the allocation process
- all market participants have the relevant information to determine how they can become a customer
- all market participants have information about the capacity allocation process, ie the process for accepting or rejecting bids/offers, and
- it can demonstrate that both systems for accepting bids and process for allocating the capacity are non discriminatory.

2.32. We consider that bilateral sales not conducted via auction, which are part of an objective, transparent and non-discriminatory allocation process, may nevertheless meet the requirements of the Gas Regulation.

2.33. For any market player with SMP, we have taken the view that, given the additional risks associated with demonstrating compliance, we would generally expect such market players to use auctions to allocate standard services.

Setting reserve prices

2.34. We do not intend to define methodologies for how storage owners that do not have SMP should set their reserve prices. It is the storage owner's responsibility to ensure the reserve price it sets is non-discriminatory and objective, ie that it does not predetermine the outcome of the auction.

2.35. By contrast, given that any market player with SMP may have an incentive to use reserve prices to withhold capacity or discriminate against certain customers, we have taken the view that we would expect these players to set the reserve price for their standard storage services based on the relevant marginal cost reference. Our

¹⁹ [Guidelines for Good Practice on Open Season Procedures \(GGPOS\)](#), ERGEG, 21 May 2007

view is that the short run avoidable cost²⁰ should be used for short term services, and the long run marginal cost²¹ for long term services.²²

2.36. Setting reserve prices on this basis should ensure that storage owners do not have to sell services at a loss. For example, for the short run, prices above the short run avoidable cost ensure that the storage owner's revenues exceed its operating costs; while long run marginal costs ensure that the owner is covering the costs of any additional investment which is needed to deliver long term services (which includes a rate of return which is adjusted for risk).

2.37. Although publication of reserve price(s) is not required for the purposes of the Third Package, we consider that certain price information, eg indicative prices, could be provided to facilitate price discovery and promote new investment. This would be in accordance with the Guidelines of Good Practice for Third Party Access for Storage System Operators (GGPSSO).²³

Congestion management procedures

2.38. As mentioned in paragraph 2.18 above, it is a legal requirement that storage facility contracts include measures to prevent capacity hoarding in cases where there is contractual congestion. Under Article 17(3) of the Gas Regulation, storage facility owners must offer any unused storage capacity on the primary market without delay²⁴ and storage facility users wishing to re-sell their contracted capacities on the secondary market must be entitled to do so.

Anti-hoarding arrangements

2.39. In addition to the requirements of Article 17(3)(a), other provisions of the Gas Regulation also have implications for the arrangements that storage facility owners put in place to prevent capacity hoarding. For example, the mechanism for allocating interruptible capacity must also meet the requirements of Article 17(1) and 17(2) of the Gas Regulation and be transparent and non-discriminatory.

²⁰ Short run avoidable costs are generally defined as the costs that could be avoided if the service was no longer provided. Avoidable costs can include both variable costs associated with the particular service as well as some fixed costs that could otherwise be avoided.

²¹ Long run marginal cost is generally defined as the cost of supplying an additional unit of a good or service when capacity can be varied. It comprises not only operating costs, but also the capital costs (including a risk adjusted rate of return on the investment) associated with increasing productive capacity to deliver the additional unit. Note that the long run marginal cost is equivalent to the long run avoidable cost.

²² In cases where capacity is scarce, it is likely that the prices paid for storage services will exceed a reserve price based on the reference marginal cost.

²³ [Amendment of the Guidelines of Good Practice for Third Party Access \(TPA\) for Storage System Operators \(GGPSSO\)](#), CEER, 14 July 2011.

²⁴ For storage facilities this must be done at least on a day-ahead and interruptible basis.

2.40. Other provisions of the Gas Regulation that are also relevant for how the anti-hoarding arrangements are put in place include Article 15(2)(a) which requires owners of storage facilities to 'offer both firm and interruptible access to services; the price of the interruptible capacity shall reflect the probability of interruption'; and Article 15(2)(c) which states that the storage owner shall offer 'storage facility users both bundled and unbundled services of storage space, injectability and deliverability'.

2.41. The objectives of these provisions are to ensure that those parties that value the capacity the most can gain access to it and to limit the potential for capacity holders to withhold capacity in order to limit competitors' access to storage or increase wholesale gas prices (and price of storage services).

2.42. As the legislation requires that unused capacity be returned to the primary market, Ofgem would also expect that storage owners adhere to the principles outlined in the choice of allocation mechanism section above when allocating interruptible services.

2.43. In line with the requirements of the Gas Regulation, we would expect that the methodology used for pricing interruptible services results in lower prices for services with a higher probability of interruption.

2.44. In order to make such arrangements function, it will also be important that owners of storage facilities meet the requirements of Article 19(2) and 19(4) of the Gas Regulation and provide market participants with sufficient information on their available capacities, at least on a daily basis.

Secondary markets

2.45. In addition to the requirements of Article 17(3)(b) of the Gas Regulation, Article 22 of the Gas Regulation requires owners of gas storage facilities to 'take reasonable steps to allow capacity rights to be freely tradable and to facilitate such trade in a transparent and non discriminatory manner. Every such operator shall develop harmonised transport, LNG facility and storage contracts and procedures on the primary market to facilitate secondary trade of capacity and shall recognise the transfer of primary capacity rights where notified by system users'.

2.46. These provisions are intended to ensure that storage facility owners have in place arrangements which facilitate the trading of capacity.

2.47. In line with current practice, we would expect that owners of storage facilities subject to nTPA arrangements in GB provide platforms where customers are able to trade their contracted capacities. We would also expect owners of relevant storage facilities to offer both bundled and unbundled services. Furthermore, we would also expect that, in order to be able to purchase capacity from the secondary market, the storage facility owner does not require potential customers to hold primary capacity at the facility.

2.48. To further facilitate secondary trading, we recommend that storage facility owners consider allowing customers to offer their contracted capacity on the primary market, ie by requesting that the storage facility owner offers the capacity on the customer's behalf. In cases where a customer returns capacity to the storage facility owner for it to sell via the primary market, our view is that the customer should receive the revenue from the sale of such capacity.²⁵

2.49. In addition, we would expect primary capacity holders to be able to trade their capacity for different timeframes. Take the example of a market player who has contracted firm capacity rights for five years. In such case, we would expect that the market player is able to either transfer that capacity to another party for the balance of the contracted period, or for a period of time within the five years. Such arrangements will be particularly important where a high proportion of capacity is sold under long term contracts.

2.50. Finally, in developing arrangements to facilitate secondary trading, storage facility owners must ensure that contractual requirements (in particular, credit arrangements) do not act as an undue barrier.

Capacity purchased by related undertakings in the primary market

2.51. Article 13(1)(b) of the Gas Directive requires that related undertakings should not be treated favourably compared to other potential system users. Articles 15 and 17 of the Gas Regulation require storage facility owners to offer services on a non discriminatory basis.

2.52. We have taken the view that these provisions prevent owners of storage facilities from being able to reserve capacity for their related undertakings, or to provide those related undertakings with services on more favourable terms than those offered to non related undertakings. In other words, we consider that related undertakings should purchase capacity from the primary (and/or secondary) market.

2.53. In cases where undertakings are purchasing capacity from a related storage facility owner, our view is that the related undertaking should be able to demonstrate that the amount it offers to pay for capacity is fair and justifiable on a commercial valuation of the storage services. This is especially important for any market player with SMP, who should also be able to justify that the amount of storage capacity that is purchased from a related storage owner is consistent with their requirements for flexible gas.

2.54. Ofgem does not propose to place a generic upper limit on the amount of capacity that market players can hold at their own storage facilities so long as the amount of capacity held can be justified. However, market players should note that

²⁵ However, the storage owner may charge a cost reflective fee for providing the service.

the potential risk of non compliance may increase as the amount of storage capacity retained by the market player rises, particularly in cases where that market player has SMP in which case an upper limit may be appropriate.

Main commercial conditions and mix of services

Consulting the market

2.55. Article 33(3) of the Gas Directive provides that Member States must require storage facility owners to publish their main commercial conditions on an annual basis. It also requires Member States to ensure that storage facility owners consult system users when developing their main commercial conditions. The requirements of this article have been transposed into the Gas Act by way of Sections 19B(3A) and (3B)²⁶, which apply to all storage facilities, other than exempted facilities.

2.56. The requirement to consult applies to both the development of new main commercial conditions and to changes to existing ones. We consider that this requirement, which extends only to the storage owner's main commercial conditions, still leaves scope for storage operators to offer products flexibly with different options and technical specifications. Our view is that, so long as they are compliant with the relevant provisions of the legislation, owners should be allowed to offer innovative products.

2.57. Storage facility owners are required to publish a draft version of the proposed conditions 'at least two months' before the final main commercial conditions take effect and inform any person who has the right to have gas stored in the facility that the draft has been published. When finalising conditions or changes, storage facility owners must take into account any representations it has received about the proposed conditions or changes.

2.58. In order to demonstrate compliance, owners of relevant facilities may consider the following:

- all facility users (and other market participants) should be made aware of the proposed new (or amended) main commercial conditions.
- market participants must be provided with both a sufficient amount of time to consider the proposed commercial conditions and to respond to the consultation. We would generally expect that market participants are provided with at least one month to propose any changes to the draft version of the proposed commercial conditions and then with at least another two weeks to consider the final draft before the final conditions take effect.
- storage owners are expected to develop clear criteria for assessing consultation responses and should be able to justify that the final version of the main

²⁶ Inserted pursuant to Regulation 10 of the Electricity and Gas (Internal Markets) Regulations 2011.

commercial conditions does not discriminate against facility users, particularly in favour of related undertakings.

2.59. As noted in the legislation, these are the minimum timeframes for publishing new (or amended) main commercial conditions. However, storage owners should still consider whether these provide sufficient scope for interested parties to consider and respond to the proposed changes.

2.60. In our view, storage owners are best suited to determine the appropriate level of consultation when developing or amending their main commercial conditions. However, we would generally expect the level of consultation to be reflective of factors such as the significance of the proposed changes or the storage owner's market position. For example, we would generally expect that changes that are most likely to have a stronger impact on system users are consulted on more extensively. Similarly, we would expect market players with SMP to undergo more extensive consultation processes than market players without SMP.

2.61. We consider that the Third Package does not require us to approve the consultation process or the final version of the main commercial conditions.

Offering a mix of services

2.62. Article 15(2) of the Gas Regulation requires storage owners to:

- provide both firm and interruptible third party access services; the price of interruptible capacity shall reflect the probability of interruption (Article 15(2)(a))
- offer storage facility users both long and short term services (Article 15(2)(b)) and
- offer storage facility users both bundled and unbundled services of storage space, injectability and deliverability (Article 15(2)(c)).

Determining the mix of services

2.63. We consider that there are various methods by which storage facility owners could test the market to determine their mix of services. For example, for new facilities (or significant increases in the capacity of an existing facility) storage owners could consider undertaking a formal consultation process to seek stakeholder views about demand for new or different products.

2.64. Alternatively, storage owners may consider it appropriate to offer proposed services directly to the market under a transparent, objective and non discriminatory allocation mechanism. In this case, storage owners could consider offering individual or multiple services to the market via an open allocation process to determine whether or not services are demanded by market participants.

2.65. We would generally expect market demand to be tested whenever a storage facility owner offers new or additional capacity or services, or when there is a

significant change in market conditions.²⁷ Where a storage facility owner offers a tailored service to a particular customer, the owner should be in position to demonstrate that other market participants are also able to purchase the service under the same terms and conditions.

Contract length

2.66. Article 15(2) of the Gas Regulation requires storage owners to offer both long and short term services.

2.67. We consider that Article 15(2)(b) requires storage facility owners to offer some firm capacity on a short term basis via the primary allocation mechanism. However, we do not intend to specify a minimum threshold for the amount of capacity that must be offered by storage owners on a short term basis. In general, the greater the mix of contract durations is tied to market demand, the lower will be the risk that a storage owner is found in breach of nTPA requirements.

2.68. Where a storage owner intends to underpin new investment by selling out capacity on long term contracts, we would expect it to consider ways of ensuring that the mechanism for offering capacity is open, transparent and non discriminatory.²⁸ The owner should also ensure that the maximum contract length is no longer than a reasonable payback period for the investment.

2.69. Where the decision of a storage facility owner is likely to have a significant impact on the level of short-term capacity available in the GB market, storage facility owners would be expected to undertake more extensive market testing of demand before changing their mix of services.

2.70. Furthermore, the higher the proportion of capacity sold by a storage owner on a long term basis, the more the owner should ensure that it can demonstrate that secondary trading is being facilitated at its facility, and that effective congestion management processes are in place.

2.71. In relation to interruptible capacity, we have taken the view that, much like firm capacity, interruptible services should be available on a mix of durations and on both a bundled and an unbundled basis. In general, the mix of these services should be reflective of market demand for them.

²⁷ In relation to a new storage facility, a storage facility owner could also test market demand for different services as part of an open season process. Storage facility owners may refer to ERGEG's (non-binding) [Guidelines for Good Practice on Open Season Procedures \(GGPOS\)](#) for more information regarding open season procedures.

²⁸ It is particularly important to ensure that mechanism for allocation capacity is objective, transparent and non discriminatory when capacity is being allocated to a related undertaking on a long term basis.

2.72. In general, we would expect that an owner's standard service offering includes some firm bundled capacity.

Transparency and information sharing arrangements

2.73. Article 19 of the Gas Regulation places a number of transparency obligations on owners of gas storage facilities. While most rules in the Gas Regulation apply only to facilities providing TPA, Article 19(4) of the Gas Regulation places obligations on all storage facilities, regardless of whether TPA is in place.

Publishing information on access

2.74. Article 19(1) of the Gas Regulation requires storage facility owners to make public detailed information regarding the services they offer and the relevant conditions applied, together with the technical information necessary for storage facility users to gain effective access to storage facilities.

2.75. To meet the requirements of this provision, storage owners are expected to provide the following information:

- services that are available: the types of services that are available and their respective features are expected to be published.
- technical specifications of these services: for each of these services key technical specifications of the products are expected to be provided to allow comparison of products. For example, storage owners are expected to publish deliverability, space and injectability of offered products.
- conditions applied to the services: the terms and conditions attached to storage should be published. For example, storage owners are expected to provide information on storage usage terms and applicable injection periods.
- processes for negotiating access to these services: the steps required to become a storage customer are expected to be published.

2.76. This information should be published on the relevant owner's website and provided directly to customers upon request.

2.77. The information provided by storage facility owners should be sufficiently detailed as to enable storage facility users to gain effective access.

Publishing information on capacity allocation

2.78. Article 19(2) of the Gas Regulation requires owners of gas storage facilities to make public information on contracted and available storage capacity on a numerical basis on a regular and rolling basis and in a user friendly standardised manner.

2.79. In our view, the requirement for such information to be provided on 'a regular and rolling basis' suggests that the daily updating of information would be

appropriate. This would also appear consistent with publication of information requirements elsewhere in Article 19 of the Gas Regulation.²⁹

2.80. We recognise that there may be, however, other areas where information on capacity allocation should be provided on a different basis. For example, in the case of Use-It-or-Lose-It (UIOLI), information may need to be provided on a closer to real time basis.

Publishing information on capacity allocation – all facilities

2.81. All storage facility owners, including those that hold a minor facility exemption, are required to make public the amount of gas in each storage facility, as well as inflows and outflows, and the available storage capacities. Storage facility owners are required to communicate this information to the transmission system operator (TSO), who shall make this public on an aggregated level per system or subsystem defined by the relevant points. The information shall be updated at least daily.

2.82. We understand that owners of GB storage facilities already provide much of this information to National Grid Gas (NGG), who publishes it in an aggregated form. However, Article 19(4) of the Gas Regulation also requires each storage owner separately to provide this information.

2.83. We consider that this requirement would best be met if NGG were to publish the required information on its website, on behalf of all storage facility owners. Essentially, this could work as an extension of the Gas Storage Monitor information currently published by NGG. We consider there may potentially be more transparency where NGG reports this information on behalf of all storage facility owners, than if the owners do so individually, as it should enable potential users to access the information on storage capacity more readily.

2.84. In cases where a storage facility owner operates multiple facilities jointly in order to maximise total capacity, we consider that the owner can request that the TSO publishes the information in an aggregated form.

²⁹ In particular, the requirements of Article 19(4) of the Gas Regulation.

3. Unbundling and management of commercially sensitive information

Chapter Summary

In this chapter we provide our views regarding compliance with the requirements on unbundling and the management of commercially sensitive information.

Introduction

3.1. In this chapter we provide guidance on compliance with the requirements on unbundling and the management of commercially sensitive information for owners of GB gas storage facilities. These arise from Articles 15 and 16 of the Gas Directive, as transposed into sections 8R³⁰ and 11C³¹ of the Gas Act.

3.2. This chapter aims to provide guidance on compliance with:

- the **unbundling requirements** for owners that operate facilities without a minor facility exemption. Article 15 of the Gas Directive has been transposed into section '8R Independence of storage facilities' of the Gas Act, and
- the requirements for the **management of commercially sensitive information** for all owners. Article 16 of the Gas Directive has been transposed into section '11C Restrictions on disclosure of information by facility owners' of the Gas Act.

Unbundling requirements

3.3. Section 8R (*Independence of storage facilities*) of the Gas Act covers the unbundling requirements for owners that do not hold a minor facility exemption.

3.4. It should be noted that in the case of storage owners that have no affiliates which undertake the relevant activities (in other words, ownership unbundled storage owners) then many of the requirements:

- are met automatically, eg legal separation
- are not applicable, eg the independence of managers and senior officers) or

³⁰ Inserted pursuant to Regulation 6 of [The Electricity and Gas \(Internal Market\) Regulations 2011](#).

³¹ Inserted pursuant to Regulation 7 of The Electricity and Gas (Internal Market) Regulations 2011.

- will be deemed to have been met and require no action, eg the requirements in the unbundling programme regarding discriminating against non-affiliates.

3.5. Some requirements in this section would still apply to storage facilities that are ownership unbundled, such as the requirements in the unbundling programme (including the monitoring and reporting of this) regarding the management of commercially sensitive information.

Degree of unbundling

3.6. Sub-sections 8R(2) and 8R(3) of the Gas Act set out the activities that the owner must refrain from carrying out. These provisions transpose the unbundling requirements of Article 15 of the Gas Directive. In summary they provide that:

- notwithstanding any licence held by the owner, the owner must refrain from the production of gas (in the case of natural gas from its natural condition in strata which would require a licence under section 3 of the Petroleum Act 1998), unless it is produced as an unintended consequence of the storage of gas and
- the owner must refrain from the supply, shipping and sale of gas, except to the extent that the activity is necessary for the efficient operation of the facility (or of another storage facility).

3.7. Storage owners may only act as a shipper if this is necessary for the efficient operation of the facility or of another storage facility. We do not consider that 8R prevents storage owners from contracting with a transporter to provide storage services, provided that they comply with this requirement. Furthermore, the Gas Act does not place any limitation on the facility owner's ability to buy gas.

3.8. In limiting the activities that storage owners can participate in, the Gas Act achieves the legal separation that Article 15 of the Gas Directive explicitly requires.

3.9. Article 31 of the Gas Directive requires that natural gas undertakings keep separate accounts for their storage activities. This requirement did not need to be transposed as it was already set out in Section 19E of the Gas Act, which requires relevant facilities to keep (in their internal accounting) separate statutory accounts.

Innovative products

3.10. Where a storage owner is responding to customer demands, offering innovative products may be beneficial to the market, for example to cover innovative products created in response to in-year demand.

3.11. Some innovative products are 'virtual', for example Centrica Storage Limited (CSL)'s V-Store. We recognise that in order for a storage owner to provide such services they may be required to undertake other activities such as to buying (and selling) gas from other sources. For example the owner might purchase gas at the NBP or have contractual arrangements with other providers of flexible gas.

3.12. Our view is that the ability of storage owners to provide innovative services, including virtual storage services, is beneficial for the GB market. Our view is that, so long as they are compliant with the relevant provisions of the legislation, owners should be allowed to offer innovative products. Our view is that owners should be able to demonstrate a sufficient nexus between the activities of shipping and trading of gas and the provision of storage services.

3.13. We will work with storage owners regarding the additional information that we may require in order to monitor these activities.

Independent operation

3.14. Section 8R(4) states that owners subject to the unbundling provisions must operate the facility independently of any affiliates that produce, supply, ship or sell gas and must, in particular, ensure that:

- no senior officer or manager of the owner is a senior officer or manager of the affiliate
- if a senior officer or manager of the owner of the facility has an interest in the affiliate that conflicts³², or is likely to conflict, with the interests of the facility, that the owner maintains procedures to ensure that the facility is operated independently of that interest in the affiliate
- the owner can take decisions without the consent of that affiliate in respect of any assets necessary to operate, maintain or develop the facility and
- the owner does not take instructions from the affiliate regarding day to day operations or individual decisions concerning the construction or upgrading of the facility.

Separation of senior officers and managers

3.15. A 'manager' is defined in paragraph 9 of section 8R as a person responsible, directly or indirectly, for the day to day management of the business. Senior Officer is defined in the Gas Act as a director (in relation to a company), partner (in relation to a partnership) or a person holding a position equivalent to a director or partner (in any other case).

3.16. Section 8R (4)(c) states that the owner is entitled to take decisions without requiring consent of the affiliate in respect of any assets necessary to operate, maintain or develop the facility.

³² Conflict of interests includes a conflict of interest and duty and a conflict of duties.

Conflicts of senior officers' and managers' interests

3.17. It is a legal requirement that if a senior officer or manager of the owner has an interest in the affiliate that conflicts, or is likely to conflict, with the interests of the facility, that the owner maintains procedures to ensure that the facility is operated independently of that interest in the affiliate.

3.18. We also note that section 172 of the Companies Act requires that directors must act in a way that would be most likely to promote the success of the company (rather than the success of the parent company).

3.19. Our expectation is that the owner should take steps to ensure that it is aware of any conflicts of interest and that these are reported in its Compliance Report. In particular, Ofgem would expect that:

- under the required code of conduct (discussed further below), owner's employees are required to declare any (actual or potential) conflicts of interest, to the owner and
- in the required annual Compliance Report that is sent to Ofgem, the owner should declare whether there are any (actual or potential) conflicts of interest as regards managers and/or senior officers, and what mitigating actions the owner has put in place.

3.20. For example, potential conflicts of interest that we would expect to be notified in the Compliance Report include:

- the ownership of an affiliate's shares
- payment of any bonuses or any remuneration based on the performance of an affiliate or the group
- where the terms of employment (or re-employment) or performance assessment are determined or affected by an affiliate's performance, or by serving the interests of an affiliate
- having been an employee or a director of the affiliate within the preceding 12 months and
- any senior officer or manager going to work for an affiliate.

Approval of financial planning and indebtedness

3.21. Section 8R (5)(a) and (5)(b) of the Gas Act set out two instances where the parent undertaking³³ can require the owner to:

- obtain the parent undertaking's approval of the owner's annual financial planning and

³³ 'Parent undertaking' has the meaning given by section 1162 of the [Companies Act 2006](#).

- comply with restrictions on the owner's overall levels of indebtedness.

3.22. In order for the parent undertaking to be in position to approve the owner's annual financial planning, it may be the case that information needs to be passed on from the owner to the parent undertaking. However, it is important to note that this provision does not allow owners of storage facilities to breach the requirements of section 11C of the Gas Act regarding the treatment of commercially sensitive information.

3.23. We consider that where any financial information is shared under subsections 5(a) and 5(b) that, in order to minimise the risk of being found non-compliant:

- the Compliance Officer³⁴ should, as a matter of course, be aware of such sharing and be able to access and scrutinise that information
- the nature of any information sharing should be declared in the annual Compliance Report and
- the information should be retained in order to allow the owner in order to demonstrate compliance, if required.

Independence Programme

3.24. Sub-sections 8R 6(a) and 6(b) of the Gas Act state that an owner must establish an Independence Programme identifying the measures that are in place to prevent officers or employees (including managers or senior officers) from:

- discriminating against non-affiliates or
- breaching the requirements in section 11C of the Gas Act regarding the use and disclosure of commercially sensitive information.

Code of conduct for staff

3.25. Article 15(2)(d) of the Gas Directive makes clear that the Independence Programme needs to set out the "specific obligations of employees" to ensure that discriminatory conduct is excluded and that observance is adequately monitored. Ofgem considers that a code of conduct for employees is an integral requirement of the Independence Programme.

3.26. Our view is that the code of conduct must be implemented in such a way as to influence employee behaviour. Therefore, we expect that the owner will ensure compliance of its employees with the code of conduct, for example by ensuring that the code is properly disseminated, that staff training is provided where necessary and that incentives to abide by the code of conduct are in place.

³⁴ As discussed below.

3.27. Our view is that it will help to ensure compliance if staff of affiliates cooperate to meet the objectives of the Independence Programme. Therefore, we recommend that the code of conduct is extended to cover the staff of affiliates (and third parties providing services to the owner, where appropriate) in order to ensure that they:

- do not attempt to solicit or in any other way attempt to obtain (and make use of) commercially sensitive information
- do not attempt to influence the commercial policy of the owner or in any other way encourage it to favour an affiliate and
- make the owner's compliance manager aware of any breaches.

Other measures

3.28. We consider that there is a range of ways in which employees might cause the owner to breach these requirements. For example:

- if employees from an affiliate have access to the owner's premises (or parts of premises) they may be able to access commercially sensitive information
- if employees from an affiliate have access to the systems for recording, processing or storage of data they may be able to access commercially sensitive information
- if employees have access to any other equipment, facilities or property employed by the owner (for example, communication or electronic networks) they may be able to access commercially sensitive information
- if employees or groups of employees³⁵ are shared or if there is unrestricted movement of staff between the owner and an affiliate, then this may allow commercially sensitive information to pass to the affiliate and for the owner to become influenced by the affiliate.

3.29. We would expect that storage owners to put in place measures to address these risks and to explicitly set out these measures in the annual compliance report.

Monitoring and publishing the Independence Programme

3.30. Section 8R (7)(a) and 7(b) of Gas Act state that an owner must:

- ensure that compliance with the Independence Programme is monitored and
- annually publish a Compliance Report on the measures taken in accordance with the Independence Programme, and send a copy to Ofgem.

Monitoring compliance with the Independence Programme

³⁵ That is, particular functions in the business.

3.31. It is a requirement of the legislation for the Independence Programme to be monitored. We would generally expect that the owner puts in place a governance structure to facilitate effective monitoring. We would generally expect an owner to have a dedicated person, or group of people that are responsible for monitoring compliance (for simplicity, referred to as the "Compliance Officer"). To minimise the risk of non-compliance, we would recommend that the owner ensures that the Compliance Officer is independent.

3.32. Furthermore, our view is that the monitoring arrangements must be genuinely effective. Therefore, we expect that the Compliance Officer should be sufficiently resourced³⁶ and have sufficient powers³⁷ in the organisation to undertake and monitor the arrangements effectively.

3.33. We expect the owner to retain evidence (including any internal reports and records of any breaches, complaints or suspected breaches) in relation to its monitoring activities in order that it can demonstrate that compliance is being monitored effectively, if required.

Publishing the Compliance Report

3.34. The Compliance Report must be published³⁸ and sent to Ofgem each year³⁹ Ofgem expects the Compliance Report to cover, amongst other things:

- the scope and content of the code of conduct and the other measures that the owner has put in place in its Independence Programme
- the owner's board structure
- the nature of any actual or likely conflicts of interest as regards managers or senior officers along with the mitigating actions that the owner has or intends to put in place
- the monitoring arrangements that the owner has put in place including how the independence of the Compliance Officer has been ensured, and the resources, duties and powers available to the Compliance Officer
- the nature of any information that may be shared under section 8R (5) and
- any other information that the owner considers important to demonstrate compliance.

Management of Commercially Sensitive Information

3.35. In summary, provisions in section 11C of the Gas Act (which apply to all storage owners) state that:

³⁶ This includes such staff, premises, equipment and facilities as is required.

³⁷ This includes access to the owner's premises, systems, information and documentation and the cooperation of employees as is required.

³⁸ Ofgem expects that the report is published on the owner's website.

³⁹ Ofgem expects owners to publish the report each calendar year starting in 2012.

- the owner of a storage facility must take all reasonable steps to ensure that commercially sensitive information relating to the operation of the facility is not disclosed in a discriminatory way or to an associated undertaking unless disclosure is necessary in order to enable a transaction with that associated undertaking to take place⁴⁰.
- information which is obtained by the owner when transacting with an associated undertaking must not be used by the owner for any other purpose⁴¹.

3.36. For owners that do not hold minor facilities exemptions, the measures set out in the owner's Independence Programme should ensure that commercially sensitive information is protected. In any case though, we expect all owners, including those that hold a minor facility exemption, to:

- have appropriate information management systems in place to ensure that no commercially sensitive information is inadvertently shared with other customers or affiliates
- share legitimate information via a non-discriminatory, transparent manner, such as through a public bulletin board and
- set out their confidentiality provisions as part of their main commercial conditions.⁴²

3.37. We reserve the option to request specific reports on these arrangements from owners with minor facility exemptions.

⁴⁰ Section 11C (1)(a) and (1)(b) of the Gas Act.

⁴¹ Section 11C (2) of the Gas Act.

⁴² Storage facilities subject to nTPA requirements in GB currently have confidentiality provisions as part of their standard storage contracts. For CSL, the requirements regarding the use of commercially sensitive information are also set out in the Rough Undertakings.

4. Governance, monitoring and enforcement

Chapter Summary

This chapter sets out details of the relevant legislation implementing the Third Package in respect of governance, monitoring and enforcement. It then outlines our views and approach regarding governance, monitoring and enforcement for storage facilities at GB.

4.1. Governance, monitoring and enforcement obligations play an important role in the development of an efficient and effective energy market. Under the legal provisions discussed in the next sections, the Authority will have the ability to investigate and take action against a storage owner where there is reason to believe that it is not complying with the relevant requirements.

4.2. This chapter sets out our view on governance, monitoring and enforcement. In the following sections, we outline the relevant legislation and then our views regarding our approach to monitoring and enforcement.

Relevant Legislation

4.3. In transposing the Gas Directive, the Gas Act has been amended such that the governance of storage facilities will change, including with respect to the expansion and strengthening of the Authority's role in monitoring and enforcing the relevant requirements. Specifically:

- **enforcement:** Sections 28 to 30F of the Gas Act now also apply to the owner of a storage facility⁴³ for the purposes of ensuring compliance with the 'relevant requirements'⁴⁴
- **monitoring:** Section 34 and Section 34A of the Gas Act now also allow the Authority to serve a notice on the owner of a storage facility to produce required documents and specified information⁴⁵. Section 38 of the Gas Act also allows the authority to require the production information in the event that it appears that a 'relevant requirement' may be being, or may been, contravened.

4.4. The 'relevant requirements' referred to above include compliance with the relevant provisions of the Gas Regulation (including third party access) and Gas

⁴³ The owner of a storage facility will be deemed a 'regulated person'. 'Regulated person' is defined in section 28 (8) of the Gas Act.

⁴⁴ Regulation 37 of [The Electricity and Gas \(Internal Markets\) Regulations 2011](#).

⁴⁵ Regulation 30 of the Electricity and Gas (Internal Markets) Regulations 2011

Directive as transposed in the Gas Act (including unbundling from related undertakings and commercially sensitive information).

4.5. The monitoring and enforcement provisions allow us to engage in a mix of proactive market surveillance, and to investigate and take action against market players where there is reason to believe that they are not complying with the relevant regulatory requirements.

4.6. The introduction of these provisions does not preclude us from tackling anticompetitive behaviour through UK and EU competition law, where appropriate.

Enforcement and Monitoring

4.7. In practical terms, the enforcement and monitoring provisions in the Gas Act enable us to:

- investigate contraventions of the relevant requirements
- issue provisional and final orders to ensure compliance and
- impose penalties of up to 10% of the regulated person's turnover.

4.8. Investigations can be undertaken on our own initiative or following the receipt of a complaint or a referral from other regulatory and consumer representative bodies. Please refer to our 'Enforcement Guidelines'⁴⁶ for more details on our approach to enforcement.

4.9. Our view is that for many of the provisions, particularly those on information provision and transparency, and consulting the market, any non compliance is likely to be highly visible to the market. Given this, we may expect to receive complaints or hear concerns from market participants which, alongside our own proactive monitoring, would enable us to identify any potential areas of storage owner's non-compliance with the regulatory requirements.

4.10. On the unbundling requirements for owners that form part of a vertically integrated undertaking, Chapter 3 discusses the sorts of information that we would require in order to monitor compliance. Where we deem it appropriate, we may request additional information from storage owners. We will engage with the relevant storage owners where appropriate to determine what additional information would be required.

⁴⁶ [Enforcement Guidelines](#), Ofgem, 12 September 2014.

Appendices

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Appendix 1 - Pivotality

1.1. Our 2011 guidance on third party access to storage stated that pivotality analysis was expected to form an integral part of our assessment of Significant Market Power (SMP).

1.2. Pivotality analysis identifies the market players that are 'pivotal' by using demand and supply data. When a market player is pivotal total demand cannot be met from all sources of supply controlled by other players. Therefore the market player will not face material competitive constraints for its pivotal volume of supply (ie, it is guaranteed a certain market share as a result of the lack of competing supplies).

1.3. A pivotal player and its related undertakings have the potential to significantly raise peak wholesale prices and/or reduce off-peak prices as gas demand is relatively price inelastic. The degree of a player's market power can be assessed by looking at the pivotal volume of supply as a percentage of total demand, over a range of timeframes.

Pivotality Model

1.4. The below section is taken from our 2011 guidance, and has not been updated. This is because our general approach to pivotality has not changed, and therefore the same principles still hold. We are reproducing this text to maintain instructions for using the illustrative model published in 2011, which we are also including alongside this guidance. In carrying out future pivotality analysis, our assumptions would be updated.

From 2011 guidance:

Introduction

1.1. To aid stakeholders' understanding of Ofgem's proposed framework for assessing pivotality, we have decided to publish on our website an example of what an actual pivotality model might look like in practice.⁴⁷ This Appendix provides a high-level description of the model, focusing on its key data inputs and assumptions. It also provides instructions on how to run the model and interpret its results.

1.2. In publishing such an example, however, we do not consider we have fettered our discretion to use alternative models to assess pivotality going forward, or to update any of the model's key data inputs or assumptions in line with market developments. Also, whilst providing such an example, Ofgem is not committing

⁴⁷ https://www.ofgem.gov.uk/sites/default/files/docs/2011/12/gas-pivotality-model_0.xlsm

itself to providing regular updates of the model or ensuring any of its key data inputs are current or applicable. We shall exercise our judgement when using the model, including the appropriate data to use.

1.3. The onus is on market participants to ensure compliance with the provisions of the Third Package. In our guidance, we suggest some good practice safeguards that market players with SMP may want to consider in order to reduce their risk of non compliance. However, it is for market players themselves to determine whether they have SMP. To that effect, market players are free to develop their own models, or use different assumptions to ours, when self-assessing their own position in the market. We would be willing to discuss the position of specific market players following receipt of analysis explaining why an assessment of SMP for that market player is ambiguous.

1.4. As noted in our consultation, pivotality is a well established tool for the assessment of market power in the energy sector.⁴⁸

1.5. Our model explicitly addresses the issue of substitutability of different sources of supply over differing timeframes. This is done by taking a series of snapshots of progressively longer exposure (one day, one week, one month, one quarter, one season) and assessing, within each period, the likely supply and demand for gas.

1.6. For each gas year⁴⁹ (from the current up to 2016/17) our model estimates whether a given market player's gas supplies are needed to meet total GB gas demand over the analysed period (ie, either a day, a week, a month, a quarter or a season out of a year). That is, for every gas year considered, our model analyses whether a given market player's supplies are 'pivotal' in meeting total GB gas demand in each of 365 days, 52 weeks, 12 months, 4 quarters or 2 seasons.

1.7. This 'snapshot' approach to modelling pivotality abstracts from the complexities of dynamic storage management. In that respect, our model is essentially static, ie it examines each period in isolation, irrespective of previous periods' inflows and outflows. This approach makes our model simple and transparent as it avoids the need for questionable assumptions on, eg the injection and withdrawal merit order for storage supplies or the level of demand which would trigger injection into storage. This means that any behavioural considerations need to be considered outside of the model.

Structure of the model and key assumptions

1.8. The model has been developed in Microsoft Excel and is composed of twenty five tabs. The content of each tab is explained in the sheet named **Model Explanation**.

⁴⁸ See for example Twoney, Green, Neuhoﬀ and Newbery, [A Review of the Monitoring of Market Power](#).

⁴⁹ In our model, the gas year runs between 1st October and 30th September.

1.9. The following two sections discuss key data and assumptions used to estimate gas demand and supply over the time periods considered. A final section then explains how to run the model and interpret the results obtained.

Demand

1.10. Our model estimates demand on a daily basis, and aggregates it over the appropriate time frame in order to reach weekly, monthly, quarterly and seasonal demand estimates. Our model uses historic data⁵⁰ for gas year 2009/10 and projects this forward to future years by applying the peak and average annual growth rates forecasted by National Grid in its latest Ten Year Statement (TYS)⁵¹. In its 2010 TYS⁵², National Grid projects annual demand falling at 0.5% per annum over the ten-year forecast period (2010-2020), and peak demand rising by 1.1% per annum between 2010/11 and 2020/21.

1.11. The daily demand profile feeding into the final pivotality calculations is located in column **N** of tab **c_Demand Calculations**. By modifying the percentage value in cell **E4** of tab **Interface** (which by default is set at 100%), the model allows testing for the effect of increasing or decreasing daily GB gas demand by x% relative to the default (base-case) scenario.

1.12. The model considers all sources of gas supply in GB, distinguishing between storage and non storage-sources of supply. The latter are broken down further into supplies from the UK Continental Shelf (UKCS), Norwegian gas supplies, LNG imports and Continental supplies (via the two gas interconnectors, IUK and BBL).

Supply

Storage sources

1.13. For each period under consideration, storage sites are assumed to flow at maximum rate until they run out of gas (as shown in tab **c_Storage calculations**). The seasonal nature of storage is replicated by assuming different opening stock levels in every quarter. These have been calculated based on historic National Grid data⁵³ on 2009/10 daily storage stock levels. Details can be found in tab **c_Storage stock levels(quarter)**.

1.14. Our model considers all existing GB storage sites (as listed in the 2010 TYS and Platts's European Daily, UK and Ireland Gas Project Tracker November 15 2010) and

⁵⁰ Historic data sourced from National Grid:

<http://marketinformation.natgrid.co.uk/gas/DataItemExplorer.aspx>

⁵¹ Ten Year Statements (TYS) are an annual publication by National Grid:

<http://www.nationalgrid.com/uk/Gas/TYS/>

⁵² The most recent TYS is currently the [2010 TYS](#), published in December 2010.

⁵³ "Historic Storage Monitors 1 October 2009 - 30 September 2010", National Grid, 7 October 2009, accessible by clicking [here](#).

also, depending on the year under consideration, those facilities under construction.⁵⁴ By modifying the storage new-build schedule on tab **r_Online storage**, the model allows to test for the effect of bringing forward the construction of new storage sites to incorporate them (in full, or partially) within the modelling horizon. Our assumptions regarding the technical characteristics of existing and new storage facilities can be modified (relevant cells are located on tabs **r_Storage parameters** and **Interface**).

Non-storage sources

1.15. As can be seen in tab **c_Sources calculations**, our model estimates supplies from non-storage sources on a daily basis, and then aggregates them for the period under consideration where necessary.

1.16. In our view it would be unrealistic to expect that all non-storage sources of supply will be able to flow at 100% of their total capacity at all times, particularly over the longer time periods. Hence, in order to derive an estimate of the likely amount of supply that may be realistically provided from each non-storage source of supply, we apply a set of capacity coefficients⁵⁵. These capacity coefficients vary according to the source of supply and the time period under consideration.

- Capacities

1.17. Our capacity figures (tab **r_Capacities and coefficients**) for non-storage sources of supply are sourced from National Grid (TYS 2010) and are shown below. The only adjustment we have made to National Grid's figures is to the latter years of LNG, where we assume no new facilities will come online.⁵⁶ This is in line with our assumptions on storage new-build, where we include only existing facilities, and also, depending on the year under consideration, facilities under construction. As there are currently no LNG terminals under construction in GB, we include no expansions in LNG capacity.

⁵⁴ According to Table 4.7D in National Grid's YYS 2010, the following gas storage facilities are currently under construction in GB: Aldbrough (portion under construction), Hill Top Farm, Holford and Stublach.

⁵⁵ A capacity coefficient of 90% would mean that flows would be expected to be 90% of the physical capacity for the period that the coefficient applies to.

⁵⁶ National Grid's YYS 2010 assumes higher LNG capacity from 2014/15 onwards, as it includes facilities not yet under construction. We have excluded these from our model, in line with our assumptions on storage new-build.

GWh/day	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17
UKCS	2,255	1,998	1,801	1,654	1,637	1,562	1,562	1,466
Norway	1,278	1,419	1,419	1,419	1,419	1,419	1,419	1,419
LNG	1,324	1,528	1,528	1,528	1,528	1,528	1,528	1,528
Continent	1,235	1,336	1,336	1,336	1,336	1,336	1,336	1,336
-IUK	757	757	757	757	757	757	757	757
-BBL	478	579	579	579	579	579	579	579

Source: National Grid TYS 2010.

1.18. Our model allows to “stress test” the non-storage capacities above, eg to account for a potential outage lasting for a number of days. Stress test capacities may be introduced by model users in cells **E5** and **G5** of tab **Interface**. By default, these values are set at 0 GWh/day, so that the model’s base-case scenario assumes no stress tests.⁵⁷

- Capacity coefficients

1.19. As noted above, our model uses a set of capacity coefficients (tab **c_Capacities and coefficients**) to derive meaningful estimates of the volume of supply that can be realistically be expected to be provided by each non-storage source of supply across the different time frames.

1.20. The table below sets out an example of capacity coefficients that could be used in order to derive such estimates. We stress the fact that these are for illustration purposes only. They are not definitive and may evolve in response to changes in market conditions. We would expect to consider alternative scenarios and use different source and analytical tools to derive our estimates. The sections below explain the sources of the illustrative figures

%	Daily	Weekly	Monthly	Quarterly	Seasonal
UKCS	90%	90%	90%	90%	90%
Norway	98%	98%	98%	81%	81%
LNG	99%	75%	75%	60%	33%
Continent	80%	80%	56%	32%	18%

Source: Ofgem calculations based on National Grid’s Ten Year Statement 2010 and National Grid’s Winter Outlook Report 2009/10. For illustration purposes only.

⁵⁷ Stress test N-1 (cell **E5** in tab **Interface**) is the amount of capacity that is assumed to be unavailable, eg due to an outage over the whole period. Stress test N-2 (cell **G5** in tab **Interface**) is the amount of capacity assumed to be unavailable due to a second stress test. Unlike stress test N-1, the duration of stress test N-2 may be modified by adjusting the values in cells **V3:Z3** of tab **c_Sources calculations**.

- *UKCS*

1.21. Our UKCS coefficients are based on National Grid's TYS 2010 and Winter Outlook Report 2009/10 (WOR 09/10).⁵⁸ In the latter, National Grid states that it is appropriate to assume a level of UKCS supply below the maximum forecast when assessing the overall supply outlook, and that the chosen level should reflect the level of delivered UKCS gas that might be expected on average during a prolonged cold spell. Whilst acknowledging that UKCS availability could be lower under more severe conditions, National Grid retains an assumed availability rate of 90% for high demand conditions (typically when demand exceeds 400 mcm/d).

- *Norway*

1.22. Given the contractual arrangements for much of the gas coming from Norway, there is less certainty that flows will be as consistently high throughout longer periods as they can be in the short term.

1.23. Our daily capacity coefficient is based on National Grid's TYS 2010, which forecasts that Norwegian peak day supplies will be just below capacity in years to come. Our seasonal coefficient for Norwegian supplies is based on National Grid's WOR 09/10.

- *LNG*

1.24. The global nature of the LNG market makes it difficult to forecast LNG supplies to GB, as evidenced by the difference in peak LNG supply estimates in National Grid's TYS 2009 and 2010.

1.25. In line with National Grid's forecasts in its TYS 2010, our pivotality model assumes there will be close to 100% LNG availability on a peak day basis. To derive a reasonable forecast of LNG supplies across a whole season we assume an utilisation rate of 33%, as implied by National Grid's forecasts in the WOR 09/10.

- *Continent*

1.26. It is also difficult to forecast Continental gas supplies to GB via IUK and BBL. As for LNG, our capacity coefficients for Continental gas supplies are based on National Grid forecasts. Our daily capacity coefficient is based on its TYS 2010, whilst our seasonal coefficient is based on the WOR 09/10.⁵⁹

⁵⁸ [Winter Outlook Report 2019/10](#), National Grid, 1 October 2009.

⁵⁹ The 2010 TYS does not forecast peak supplies from IUK and BBL independently. Instead, these are aggregated into a single figure (see Figure 4.8J). By contrast, in the WOR 09/10, winter flows from IUK and BBL are forecast individually. We have aggregated these, and

Running the model and interpreting its results

1.27. Users of the model should open the spreadsheet and turn to tab **Market player X** in the first instance. Next, they should fill in all cells highlighted yellow, as explained below.

1.28. Cells **B5:I7** and **B9:I10** should be filled in with annual forecasts of the market player's maximum daily deliverability (GWh/day) from each of the GB non-storage sources of supply (ie, UKCS, Norway, LNG, IUK and BBL). In so doing, market players should include any long-term capacity bookings at GB import infrastructure and/or any market-priced (NBP-indexed) gas procurement contracts with, say, more than 2 years to expiry.

1.29. Cells **C20:C45** should be filled in with an estimate of the market player's share of space at each storage facility, as a proxy for its share of total deliverability.

1.30. Finally, users of the model should turn to tab **Table** and click on the red button **Click here for summary table**. This will run a macro producing a tabulated summary of results (macros need to be enabled in the spreadsheet), in the format specified below. This is the key output table of the model.

Click here for summary table

Pivotality results	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17
Daily	0%, [0]	0%, [0]	0%, [0]	0%, [0]	0%, [0]	0%, [0]	0%, [0]	0%, [0]
Weekly	0%, [0]	0%, [0]	0%, [0]	0%, [0]	0%, [0]	0%, [0]	0%, [0]	0%, [0]
Monthly	0%, [0]	0%, [0]	0%, [0]	0%, [0]	0%, [0]	0%, [0]	0%, [0]	0%, [0]
Quarterly	0%, [0]	0%, [0]	0%, [0]	0%, [0]	0%, [0]	0%, [0]	0%, [0]	0%, [0]
Seasonal	0%, [0]	0%, [0]	0%, [0]	0%, [0]	0%, [0]	0%, [0]	0%, [0]	0%, [0]

*Market player's 'pivotal gas volume of supply' as % of GB gas demand, [number of periods in which market player is pivotal]

1.31. As can be seen from the table above, the results for each gas year and time frame considered are presented as a combination of two numbers:

- The first figure represents the market player's 'pivotal volume of supply' for the analysed period, ie the amount of gas that the market player must supply in order to ensure that total GB gas demand is met, assuming the maximum available amounts of supply are being supplied by the remaining market players. This number is expressed as a % of total GB gas demand.
- The second figure, [in brackets] represents the number of periods in which the market player has been found to be pivotal, eg if in the weekly model this figure is [5] this means that the market player is 'pivotal' in meeting weekly demand in 5 out of 52 weeks considered.

divided them by the sum of IUK and BBL capacity, to derive the seasonal coefficient presented in the table.

1.32. Clearly, the larger these two figures are, the higher will be the market player's market power.

Appendix 2 - Glossary

A

Anti hoarding arrangements

Transparent mechanism(s) that allow unused capacity to be made available to the market so as to maximise the use of a facility.

Authority

The Gas and Electricity Markets Authority. Ofgem is the office of the Authority. The terms 'Ofgem' and the 'Authority' are used interchangeably in this document.

Available capacity

As defined in Article 2 of the Gas Regulation, 'available capacity' means the part of the technical capacity that is not allocated and is still available to the system at that moment.

B

Balgzand Bacton Line (BBL)

The Balgzand Bacton Line (BBL) is an interconnector that flows gas from Balgzand in the Netherlands to Bacton in the UK.

C

CAM

Capacity allocation mechanisms

CC

Competition Commission

CE

Centrica Energy

CEER

Council of European Energy Regulators

CMA

Competition and Markets Authority

CMP

Congestion management procedures

CSL

Centrica Storage Limited

D

Deliverability

As defined in Article 2 of the Gas Regulation, 'deliverability' means the rate at which the storage facility user is entitled to withdraw gas from the storage facility.

DECC

Department of Energy and Climate Change.

E

Elasticity of demand

Elasticity of demand is a measure used in economics to show the responsiveness (or elasticity) of the quantity demanded of a good or service to a change in its price. More precisely, it gives the percentage change in quantity demanded in response to a one percent change in price (holding constant all the other determinants of demand).

The Electricity and Gas (Internal Markets) Regulations 2011

The Electricity and Gas (Internal Markets) Regulations 2011 ("the Regulations") make amendments to electricity and gas legislation and licences in order to implement, and address matters arising out of or related to, Directive 2009/72/EC ("the Electricity Directive") and Directive 2009/73/EC ("the Gas Directive") of the European Parliament and of the Council, concerning common rules for the internal market in electricity and gas, respectively; Regulation (EC) No 714/2009 on conditions for access to the network for cross-border exchanges in electricity ("the Electricity Regulation"), Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks (as amended) ("the Gas Regulation") and Regulation (EC) establishing the Agency for the Co-operation of European Regulators ("the Agency Regulation"). These instruments are collectively known as the European Union (EU) Third Energy Package ("the Third package"). The Third Package repeals Directives 2003/54/EC and 2003/55/EC and Regulations (EC) No 1228/2003 and (EC) No 1775/2005.

The Regulations also provide for the enforcement, by the Gas and Electricity Markets Authority ("the Authority"), of certain provisions of Commission Regulation (EU) No. 838/2010 of 23 September 2010 ("the ITC Regulation") on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging.

ERGEG

European Regulators' Group for Electricity and Gas. This group was formally dissolved by the European Commission (EC), with effect from 1 July 2011.

G

Gas Act

The Gas Act 1986.

Gas Directive

For the purposes of this document, this term refers to Directive 2009/73/EC of the of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC.

Gas Regulation

For the purposes of this document, this term refers to Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005.

Gas storage facility

See 'storage facility'.

Gas year

Year for the 12 months ending 30th September.

GGP SSO

Guidelines for Good Third Party Access (TPA) Practice for Storage System Operators

GSOG

Gas Storage Operators Group

I

Independence Programme

The meaning of this term is that given by Section 8R of the Gas Act. The owner must establish a programme (the 'independence programme') in relation to the owner's senior officers, other officers, managers and employees for the purpose of ensuring that they do not cause the owner to - (a) discriminate against persons who are not affiliates of the owner; or (b) breach any of the owner's obligations under section 11C of the Gas Act, regarding the disclosure or use of information.

Injectability

As defined in Article 2 of the Gas Regulation, 'injectability' means the rate at which the storage facility user is entitled to inject gas into the storage facility.

Interconnector UK (IUK)

Commercial name of the interconnector linking Belgium and Great Britain

L

Liquefied Natural Gas (LNG)

The fluid state of natural gas, it can be obtained industrially by cooling down natural gas. LNG is used essentially in dedicated tanker ships to transport gas overseas in a much reduced volume.

Long run marginal cost (LRMC)

The cost of supplying an additional unit of a good or service when capacity can be varied. It comprises not only operating costs, but also the capital costs (including a risk adjusted rate of return on the investment) associated with increasing productive capacity to deliver the additional unit. Note that the long run marginal cost is equivalent to the long run avoidable cost.

M

Main commercial conditions

As defined in Section 48 of the Gas Act, 'main commercial conditions' means, in the case of a storage facility, such information as would enable a potential applicant for a right to have gas or liquid gas stored in the facility to make a reasonable assessment of the cost of, or the method of calculating the cost of, acquiring that right; the other significant terms on which such a right would be granted; and such additional information as the Authority may from time to time specify by notice.

Manager

As defined in Section 8R(9) of the Gas Act, 'manager', in relation to the owner of a storage facility or an affiliate of the owner, means a natural person who is responsible, directly or indirectly, for the day to day management of the owner or the affiliate.

Market player

For the purposes of this document a 'market player' should be understood to mean the owner of a gas storage facility (owner) and any related undertaking(s).

Minor facilities exemption (MFE)

Exemptions granted on the basis that use of the storage facility by other persons is not technically or economically necessary for the operation of an efficient gas market, pursuant to Section 8S of the Gas Act.

N

National Balancing Point (NBP)

The NBP is the virtual unified trading point of the GB gas transmission network.

National Grid Gas (NGG)

National Grid owns and operates the National Transmission System throughout Great Britain and owns and operates a significant Gas Distribution Network throughout part of England.

Negotiated Third Party Access (nTPA)

Negotiated Third Party Access (nTPA) refers to arranging supply contracts on the basis of voluntary commercial agreements negotiated in good faith.

Nomination process

Customers that hold capacity rights at a storage facility must inform the owner of the storage facility before they intend to utilise their contracted capacity (ie, to inject or withdraw gas). This is referred to as the nomination process. The deadline for when customers can nominate to use their capacity will vary across storage facility owners and across different types of services.

O

OFT

Office of Fair Trading

Owner

As defined in the Gas Act, in relation to a storage facility, 'owner' includes a person occupying or having control of the facility. It should be noted that the Gas Regulation and the Gas Directive use different terminology and refer to 'storage system operators' instead. For consistency in this document, we have used the UK term 'owner' throughout.

P

Petroleum Act

The Petroleum Act 1998.

Pivotality analysis

Pivotality analysis is one of the possible ways in which one could measure market power and is commonly used in electricity markets. Pivotality analysis identifies the market players that are 'pivotal' by using demand and supply data. When a market player is pivotal, total demand cannot be met from the total supply from all other sources of supply. Therefore, the market player will not face material competitive constraints for its pivotal volume of supply ie, it is guaranteed a certain market share as a result of the lack of competing supply.

Primary market

The market of the capacity traded directly by the storage facility owner.

R

Related undertaking

A related undertaking for the purposes of the Third Package and this guidance means an undertaking where the same person or same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings perform at least one of the functions of transmission, distribution, LNG or storage and at least one of the functions of production or supply.

Reserve price

The minimum amount that the owner of an item up for auction will accept as the winning bid in the auction.

S

Secondary market

As defined by Article 2(6) of the Gas Regulation as the market of the capacity traded otherwise than on the primary market.

Senior officer

As defined in the Gas Act, senior office means -(a) in relation to a company, a director; (b) in relation to a partnership, a partner; (c) in any other case, a person holding a position equivalent to that of a director or partner.

Significant market power (SMP)

Refers to the ability of a market player to affect the wholesale price of gas in a way that is profitable for the market player for a sustained period of time.

SSC

Standard Storage Contract

SSEHL

SSE Hornsea Limited

Storage facility

As defined in Article 2(9) of the Gas Directive, 'storage facility' means a facility used for the stocking of natural gas and owned and/or operated by a natural gas undertaking, including the part of LNG facilities used for storage but excluding the portion used for production operations, and excluding facilities reserved exclusively for transmission system operators in carrying out their functions.

Storage System operator (SSO)

As defined in Article 2(10) of the Gas Directive, 'storage system operator' means a natural or legal person who carries out the function of storage and is responsible for operating a storage facility. For consistency with the terminology used in UK law, we have referred to storage 'owners' throughout this document, rather than 'operators'. The Gas Act defines 'owner' as a person occupying or having control of the facility.

System integrity

As defined in Article 2(9) of the Gas Regulation, 'system integrity' means any situation in respect of a transmission network including necessary transmission facilities in which the pressure and the quality of the natural gas remain within the minimum and maximum limits laid down by the transmission system operator, so that the transmission of natural gas is guaranteed from a technical standpoint.

T

Ten Year Statement (TYS)

The YYS is published in line with Special Condition C2 of National Grid's Gas Transporters' Licence and Section O of the Uniform Network Code. It is published annually and provides a ten year forecast of transportation system usage and likely system developments.

Third Package

The Third Package, for the purposes of this document refers to Directive 2009/73/EC of the of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC ('Gas Directive') and Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 ('Gas Regulation').

Third Party Access (TPA)

TPA means access by third parties to transmission and distribution networks, and gas and LNG storage facilities. The requirements of TPA are met either through a negotiated (nTPA) or regulated TPA (rTPA) regime.

TSO

Transmission system operator.

TTF

The Title Transfer Facility (TTF) is a virtual trading point for natural gas in the Netherlands.

U

UKCS

The UK Continental Shelf (UKCS) is the region of waters surrounding the United Kingdom, in which the UK claims the rights to minerals.

Use it or lose it (UIOLI) arrangements

Arrangements that ensure there are incentives to “use capacity” at a facility or otherwise “lose capacity” at a facility whereby any unused capacity is made available to the market.

W

Winter Outlook Report (WOR)

Annual publication by National Grid, providing information to gas and electricity market participants on the outlook of supply and demand for the coming winter.

Z

Zeebrugge

The Zeebrugge Hub is the natural gas virtual trading point in Zeebrugge, Belgium. It is connected to the National Balancing Point (UK) via the Interconnector.

Appendix 3 - Feedback Questionnaire

1.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

1.5. Please send your comments to:

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