

Rupika Madhura  
Ofgem  
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25<sup>th</sup> November 2016

Dear Rupika,

**Statutory consultation under section 23 of the Gas Act 1986 on proposed new Standard Special Condition (SSC) A15A (Central Data Service Provider), proposed modification of SSC A15 (Agency) and other proposed consequential modifications to the Gas Transporter (GT) licence**

1. Thank you for the opportunity to comment on the above statutory consultation. This is a non-confidential response on behalf of the Centrica Group, excluding Centrica Storage.
2. We note this is the third and final consultation before the new CDSP Funding and Governance arrangements go live in April 2017. We would like to thank Ofgem for their support and involvement during the Funding Governance & Ownership (FGO) Programme.
3. Since the last licence consultation in April, many of our questions and concerns have been resolved through development of the Uniform Network Code (UNC) modification proposal which will deliver the necessary changes into code. We continue to have a number of concerns, however overall we believe the new arrangements create a starting position whereby the Transporter Agency arrangements can transfer across to the cooperative CDSP governance and direct funding model.

**Appeals**

4. One key area of the arrangements which has been addressed is a parties' ability to appeal the budget. We appreciate that Ofgem recognised this requirement, although we believe that the licence drafting should go further and appeals should apply elsewhere.
5. We believe that there should be the ability for all customers to appeal the business plan. Whilst customers participate in the business planning process, neither the licence nor UNC places an obligation for the CDSP to act on a customer instruction. The drafting only places an obligation on the CDSP to take due regard of its customer's requests. Therefore should the business plan not be fit for purpose the arbitrator must be Ofgem. Further, the appeals criteria should be extended to include the ability to appeal a budget amendment, as this too creates a new budget.
6. In addition to the above the licence drafting states an appeal can be raised if the CDSP Annual Budget is not fit for purpose, but limits appeals to when the CDSP does not provide a service or distribute profits appropriately. It is not clear why the appeals criteria have been narrowed. Appeals should be assessed against a material impact to competition and a material impact to consumers. This will align budget criteria to UNC objectives and better protect CDSP parties and consumers from harm.

**Jointly controlling the CDSP**

7. We remain concerned by the obligation to 'jointly control and govern the CDSP'. We note control of a company is not only through ownership, but it can be through contractual arrangements. Control of the CDSP will remain the responsibility of the Xoserve Board, which we have very limited ability to influence. We don't believe we have the ability to jointly control the CDSP. We believe we are limited

to 'participate and cooperate in the management' of the new arrangements and therefore the licence drafting could be amended to better reflect the scope of this activity.

8. Related to control, the licence drafting states customers have the '*opportunity*' to participate. As Transporters own the company they have the right to participate. We believe shippers and IGTs must have the right to participate to ensure they are on an equal footing.

**Definition of CDSP services**

9. The UNC has defined CDSP services as all services including Agency, Direct, Code, Non-Code and Third Party Services. The licence definition of CDSP services remains unclear and whether services include Third Party Services. We believe it will be helpful to avoid any ambiguity and for the licence drafting to clearly set out the definition of CDSP services.

**User Pays**

10. We note that paragraph 8(d) and 10 introduce the term User Pays. The new UNC arrangements do not include User Pays services and this term can be removed.
11. Appendix One captures our detailed comments on the statutory licence.
12. If you have any questions regarding any aspect of our response, please do not hesitate to contact me.

Yours sincerely

Andrew Margan  
Regulatory Manager  
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## APPENDIX ONE – DETAILED COMMENTS ON THE DRAFT SSC A15A

- Paragraph 3: “Relevant gas transporters” are defined as “other gas transporters”. This is very wide. The definition should be tightened up to refer to “*gas transporters licensed by GEMA under the Gas Act 1986 who hold shares in the CDSP*”.

It is also not clear to us, in paragraph 4, what the “minimum requirements” of Part A are in respect of the CDSP services as the rest of Part A doesn’t seem to set out these minimum requirements.

(In respect of drafting, if “CDSP services” are going to be defined under the UNC then we suggest that the licence says that the Provider needs to be appointed to provide “CDSP services” “*as such term is defined in the UNC*”.)

- Paragraph 5: For sections of the licence that are in force prior to April 2017, the drafting should be clear about when these obligations need to be complied with e.g. the obligation under the Articles of Association to appoint non-transporter directors.
- Paragraph 5(b): States Non-RGT Users’ representatives are given the “opportunity to participate” rather than the “right” to participate. Considering Transporters are the owners and automatically have the right to participate and other parties are to jointly control and govern, should all parties not be equal and have the right to participate in the contract and change management process and the related decision making process?
- Paragraph 5(c): As stated in our previous responses, for market participants to fully engage with any CDSP consultation on budget and business planning, they need access to all relevant supporting information used to create them. It is not certain that the CDSP will provide this. We believe that this Licence Condition should oblige Gas Transporters to ensure the CDSP provides this information.
- Paragraph 6(c)(i): As stated in our previous responses, the term “jointly control” can mean a number of different things, and therefore needs to be more explicitly defined here. For example, it could include control by share ownership, control by contractual rights, control by some sort of voting power, power to remove directors and/or influence a company’s policies, or control of a certain percentage of a shareholding but not a lower percentage.
- Paragraph 6(d): As stated in our previous responses, it is not sufficiently clear what is meant by the term “annual budget”. For example, we believe that this also includes an annual business plan, yet can see that this is open to interpretation. We would have material concerns if parties were not able to appeal the contents of the annual business plan. Ofgem should set out specifically here (and throughout the draft) the minimum contents of an “annual budget”.
- Finally, the drafting needs to be clear and detailed in order to make clear what triggers a right to object and whether there are grounds for an appeal. For example, it is not clear what information CDSP users need to provide in their notification. Appeals should be assessed against a material impact to competition and a material impact to consumers. This will align budget criteria to Code objectives and better protect CDSP parties and consumers from harm.
- Paragraph 7(b): States the CDSP shall not return a profit, (except where the Authority consents otherwise in writing).
- Paragraph 8: The timing here needs to be clarified. The provisions, as the drafting states, must be included in the DSC by no later than 1 April 2017 but the drafting should also state that the provisions must come into effect on 1 April 2017 (or in line with the later date that Ofgem directs).

- Paragraph 8(c): We consider that the Provider should be required to provide planning information requested by all users.
- Paragraph 8(a): Please could the meaning behind the words “otherwise procure” be clarified? For example, does this mean that the CDSP can procure the provision of the services and not provide them itself or that it remains directly responsible to users for the provision of the services but can subcontract that provision?
- Paragraphs 8(c), (d) and (e): The drafting needs to be clear and detailed in respect of what constitutes an annual budget, charging methodology and charging statement in order to make clear what triggers a right to object and whether there are grounds for an appeal.
- Paragraph 8(d): We would welcome further clarity on the “user pays” principle means so that we can understand what the recovery of the Provider’s annual budget means. It would, for example, be helpful to understand whether “user pays” relates solely to the provision of the services, and how historical costs relating to the period prior to April 2017 (whether or not they crystallise before or after that date) and extraordinary or catastrophic costs are going to be dealt with under this model. We also need to understand how the user pays model sits in the context of a not for profit, co-operative arrangement.
- Paragraphs 6 and 8(d): The GTs should be obliged to include the detailed charging methodology in the UNC which is then mirrored in the DSC so that the CDSP (as a party to the DSC) is obliged to follow it.
- Paragraph 8(d) should make clear what the “annual budget” relates to i.e. it is the provision of the CDSP services (once the definition of that is tied down). Paragraph 8(e): The charging for the CDSP services should be “cost reflective”. We consider that this obligation should also apply in Parts A and B i.e. before April 2017.
- Paragraph 8(d) refers to CDSP Services and user pays services. Likewise Paragraph 10 defines “user pays services”. Under the new Code arrangements user pays services are removed. To avoid confusion this term should be removed from the licence.
- Paragraph 8(e)(iii) states the Charging Methodology must facilitate competition between gas shippers and gas suppliers, but excludes competition between transporters. We believe there is competition between transporters in the new connection and infill market. Therefore the Charging Methodology should be extended to capture competition between Transporters.
- Paragraph 8(f): The drafting should clarify what is meant by “a financial year”.
- Paragraphs 10 and 11: As stated in our previous responses, we have particular concerns about the high level nature of the wording in this paragraph – for instance, in paragraph 10: what is the Authority “considering” and in paragraph 11: how will the Authority make “its assessment” when the drafting is not detailed.

There also needs to be clear communication, updates and set timeframes for an Authority and a GT response if the incumbent budget is to continue while the Authority considers whether there are grounds for appeal.

There should also be obligations on the GTs to work with the Authority in a timely manner to resolve the issue and to provide such information in response to the Authority’s questions as the Authority may reasonably require in relation to the matter in question.

- Paragraph 13: As stated in our previous responses, there needs to be clear timeframes and a process set out here. We also consider that this paragraph should be moved up above paragraph 11 so that the actions/events are in the correct order in the drafting.