

Appendix 3 – Proposed amendments to Standard Condition C27

This is an amendment to SLC C27 of the transmission licence, which applies to the SO only. This amendment implements our decisions on project identification described in Chapter 2 of this document and Chapter 2 of the Decision Document.

Standard Condition C27: The Network Options Assessment process and reporting requirements

Introduction

1. This condition sets out the licensee's role in assessing options for the development of the national electricity transmission system (including Offshore Wider Works) and interconnector capacity. The network options assessment (NOA) process is designed to facilitate the development of an efficient, co-ordinated and economical system of electricity transmission, ~~and the development of efficient interconnector capacity~~ and the identification of options to meet system needs which satisfy the requirements of a suitable for competitive tender.
2. The methodology underpinning the NOA process, along with how this will be approved, is set out in Part A of this condition. The requirements for the publication of the annual NOA report are outlined in Part B. The licensee's obligations regarding the provision of information underpinning the NOA process are described in Part C. Part D sets out the role the licensee will play in the early development of options and the circumstances in which the licensee will be required to do so. Together, all of these activities make up the NOA process.
3. The licensee must take such steps as are within its power, and it considers may be necessary to enable the NOA process. In carrying out the NOA process, the licensee must act in a manner that best ensures transparency and independence.

Part A: The NOA methodology and form of the NOA report

4. The licensee must, not less than once in each financial year (and at such other times as the Authority may direct), develop proposals for the NOA methodology and the form of the NOA report in consultation with interested parties. The consultation shall be of such a form and duration as practicable to reasonably allow all interested parties to contribute.
5. Following any consultation pursuant to paragraph 4, the licensee must:
 - (a) by 1 October 2015, or at such other date as directed by the Authority, submit to the Authority a proposed NOA methodology and proposed form of the initial NOA report ("the initial NOA report"). The licensee must make reasonable endeavours to ensure the NOA methodology includes the

information set out in paragraph 8. Where this has not been possible, the licensee must explain the reasons and how it proposes to progress outstanding issues; and

- (b) by 1 August of each subsequent financial year, or at such other date as directed by the Authority submit to the Authority for approval the proposed NOA methodology and form of the NOA report.

6. Submissions made under paragraph 5 must include:

- (a) a detailed explanation of the consultation process undertaken in the development of the NOA methodology and the form of the NOA report;
- (b) a summary of views from interested parties and an explanation of how these were taken into account in the development of the NOA methodology and the form of the NOA report; and
- (c) copies of any formal responses submitted to the licensee as part of its consultation process.

7. The Authority will on receipt of a submission under paragraph 5:

- (a) approve the proposed NOA methodology and/or form of the NOA report; or
- (b) give a direction to the licensee that the NOA methodology and/or form of the NOA report requires further development, and the date by which the licensee is required to submit a revised NOA methodology and/or the form of the NOA report to the Authority for approval.

8. The NOA methodology must be designed to facilitate the development of an efficient, co-ordinated and economical system of electricity transmission, and must include (but need not be limited to):

- (a) the approach used for determining what constitutes Major National Electricity Transmission System Reinforcements;
- (b) the approach used for identifying the range of options to meet system needs in accordance with the development of an efficient, co-ordinated and economical system of electricity transmission to be set out in the NOA report in accordance with paragraph 15(a)(i) and (ii);
- (c) how the options identified in (b) will be assessed, including but not limited to:
 - (i) the approach used to assess the technical, economic and environmental impacts and risks; and
 - (ii) the approach used for modelling boundary capacity, offshore transmission capacity and interconnector capacity along with assumptions and assessment criteria used;

- (d) the approach used to assess whether the range each of the most appropriate of the options identified in (b) comprise assets some or all of which satisfy

the requirements specified in regulations made by the Secretary of State under section 6BA(3) of the Act for the purpose of a competitive tender;

~~(d)~~(e) the basis for the cost estimate provided for each option;

~~(e)~~(f) the approach used to identify and assess whether option(s) to enable connections for a customer any person, as defined in Section 11 of the CUSC, comprise assets some or all of which satisfy the requirements specified in regulations made by the Secretary of State under section 6BA(3) of the Act for the purpose of a competitive tender.

Comment [NG1]: We think that referring here to "any person" is more appropriate and aligns with the approach in Condition C8 (Requirement to offer terms) when referring to applications for connection. The CUSC definition of customer (a person to whom electrical power is provided) does not appear appropriate / relevant here.

~~(f)~~(g) how the licensee will engage with interested parties to share relevant information and how that information will be used to review and revise the NOA methodology; and

~~(g)~~(h) details of the licensee's proposed timetable for updating and consulting on the methodology for the NOA reports.

Part B: The NOA report

9. The licensee must publish an initial NOA report by 31 March 2016 or such other date as directed by the Authority. The initial NOA report must be based on the NOA methodology and be in a form approved by the Authority in accordance with paragraph 7. In producing the initial NOA report, the licensee must make reasonable endeavours to ensure it includes the information set out in paragraph 15. Where this has not been possible, the licensee must explain the reasons and how it proposes to progress any outstanding issues.
10. If, following a submission of the NOA methodology and form of the initial NOA report in accordance with paragraph 5(a), the Authority has not approved or directed further development of the NOA methodology and/or form of the NOA report in accordance with paragraph 7 by 1 December 2015, the publication date set out in paragraph 9 will be treated as being amended accordingly. The amendment will equal the number of days between 1 December 2015 and receipt of the Authority's approval or direction.
11. Following publication of the initial NOA report the licensee must:
 - (a) review at least once in each financial year the NOA report prepared and published in the previous financial year and consider any improvements to better facilitate the development of an efficient, co-ordinated and economical system of electricity transmission; and
 - (b) publish an updated NOA report by 31 January or such other date as directed by the Authority in a form approved by the Authority. This must be based on and include the latest NOA methodology approved by the Authority pursuant to paragraph 7.
12. If, following a submission of the methodology and the form of the NOA report by the date set out in paragraph 5(b), the Authority has not approved or directed

further development of the NOA methodology and/or form of the report in accordance with paragraph 7 by 1 October the publication date set out in paragraph 11(b) will be treated as amended accordingly. The amendment will equal the number of days between 1 October and receipt of the Authority's approval or direction.

13. The licensee must publish the NOA report on its website in such readily accessible form and manner that it considers will facilitate the development of an efficient, co-ordinated and economical system of electricity transmission, and provide a copy of the NOA report on request, and free of charge, to any person who asks for one.
14. In complying with the requirements of paragraph 13, the licensee must have due regard to the need for excluding from the NOA report any information that would or might seriously and prejudicially affect the commercial interests of the owner of that information if published or might be expected to be incompatible with any legislation, rule of law or licence condition. The licensee must provide to the Authority its reasons for any omission of information from the NOA report.
15. Each NOA report (including the initial NOA report) must, in respect of the current financial year and each of the nine succeeding financial years:

(a) set out:

- (i) the licensee's best view of the options for Major National Electricity Transmission System Reinforcements (including any Non Developer-Associated Offshore Wider Works [and SO-led Options](#) that the licensee is undertaking early development work for under Part D), and additional interconnector capacity that could meet the needs identified in the electricity ten year statement (ETYS) and facilitate the development of an efficient, co-ordinated and economical system of electricity transmission;

~~(ii) the licensee's best view of alternative options, where these exist, for meeting the identified system need. This should include options that do not involve, or involve minimal, construction of new transmission capacity; options based on commercial arrangements with users to provide transmission services and balancing services; and, where appropriate, liaison with distribution licensees on possible distribution system solutions;~~

- ~~(iii)~~ [\(ii\)](#) the licensee's best view of the relative suitability of each option, or combination of options, identified in accordance with paragraph 15(a)(i) ~~or (ii)~~, for facilitating the development of an efficient, co-ordinated and economical system of electricity transmission. This must be based on the latest available data, and must include, but need not be limited to, the licensee's assessment of the impact of different options on the national electricity transmission system and the licensee's ability to co-ordinate and direct the flow of electricity onto and over the national electricity transmission system in an efficient, economic and co-ordinated manner; ~~and~~

~~(iv)~~(iii) the licensee's recommendations on which option(s) should be developed further to facilitate the development of an efficient, co-ordinated and economical system of electricity transmission; ~~and~~

(iv) the licensee's best view of whether the option(s) assessed ~~in~~ under the approach established in accordance with paragraph 8(d) comprise assets some or all of which satisfy the requirements specified in regulations made by the Secretary of State under section 6BA(3) of the Act for the purpose of a competitive tender. The licensee's best view must be accompanied by an explanation of how it has come to that view; and

(v) the licensee's best view of whether the option(s) identified and assessed ~~in~~ under the approach established in accordance with paragraph 8(f) comprise assets some or all of which ~~satisfy~~ the requirements specified in regulations made by the Secretary of State under section 6BA(3) of the Act for the purpose of a competitive tender. The licensee's best view must be accompanied by an explanation of how it has come to that view.

- (b) be consistent with the ETYS and where possible align with the Ten Year Network Development Plan as defined in standard condition C11 (Production of information about the national electricity transmission system), in the event of any material differences between the Ten Year Network Development plan and the NOA report an explanation of the difference and any associated implications must be provided; and
- (c) have regard to interactions with existing agreements with parties in respect of developing the national electricity transmission system and changes in system requirements.

Part C: Provision of information

16. Based on the NOA methodology set out in Part A, the licensee must provide ~~electricity~~ transmission licensees and ~~interconnector developers~~ Interconnector Developers if requested to do so:
- (a) with information and analysis to support them in their decision-making and development of options to meet system needs as identified in the ETYS. This must include information on the potential for coordination between parties where the licensee's analysis suggests coordination could facilitate the development of an efficient, co-ordinated and economical system of electricity transmission. The licensee must provide this information and analysis in such form and within such timescales as transmission licensees and ~~interconnector developers~~ Interconnector Developers may reasonably request and which is necessary to support these parties' decision making and development of options;
 - (b) with its assessment of the options that a party is considering for Major National Electricity Transmission System Reinforcements and interconnectors, as well as its assessment of any alternative options being considered by other parties. The licensee must provide the assessment in such form and within

such timescales as transmission licensees and ~~interconnector developers~~ Interconnector Developers may reasonably request and which is necessary to support these parties' decision making;

- (c) with updated information and analysis to support submissions to the Authority in such form and within such timescales as transmission licensees and ~~interconnector developers~~ Interconnector Developers may reasonably request and which is necessary to support these parties' submissions to the Authority;
 - (d) In complying with the requirements of this paragraph, the licensee must have due regard to the need to exclude from disclosure any information which would or might seriously and prejudicially affect the commercial interests of the owner of that information if disclosed or might be expected to be incompatible with any legislation, rule of law or licence condition. The licensee must provide to the Authority its reasons for any non-disclosure of information.
17. Based on the NOA methodology set out in Part A, the licensee must if requested submit to the Authority the information it has provided to parties under paragraph 16 on the assessment of options to meet a particular system requirement. This includes but is not limited to information to support a needs case for a Strategic Wider Works Output, a Needs Case for Developer-Associated Offshore Wider Works and any interconnector developers submission to the Authority. The licensee must also submit any additional information requested by the Authority. The licensee's submissions must be made in timescales consistent with related submissions from other parties to the Authority, and as directed by the Authority.
18. In relation to interconnectors, based on the NOA methodology set out in Part A, the licensee must submit to the Authority, within the timescales directed by the Authority, information on:
- (a) the efficiency of the connection choices made by an ~~interconnector developers~~ Interconnector Developers, based on the licensee's involvement in assessing different options, including the costs of any necessary reinforcements required to connect interconnectors to the national electricity transmission system;
 - (b) the licensee's assessment of the impact of new interconnectors on system operation. This should include costs and benefits relating to provision of security of supply including ancillary services, constraint management and other operational factors, which may accrue to the licensee and to consumers; and
 - (c) the licensee's assessment of changes in wholesale prices as a result of interconnector flows and the impact of these changes on GB consumers, generators and interconnectors.
19. The Authority may direct the licensee to submit additional information on the assessment of options specified in paragraphs 16, 17 and 18, within such

timeframe as the Authority may require in order to carry out any of its functions in relation to the assessment of submissions.

Part D: Early development of options

20. The licensee must undertake early development of options for Non Developer-Associated Offshore Wider Works where these have been identified as options for the development of the national electricity transmission system in accordance with the NOA methodology. The development of these options should be consistent with the NOA methodology and undertaken in a transparent manner which will enable the options to be compared with alternative options (including those being developed by other parties) in accordance with the requirements in paragraph 15(a)(i) ~~and (ii)~~.
21. The licensee must undertake early development of SO-led Options or, where an SO-led Option requires contributions from more than one transmission licensee, co-ordinate early option development where these have been identified as options for the development of the national electricity transmission system in accordance with the NOA methodology. The development of these options should be consistent with the NOA methodology and undertaken in a transparent manner which will enable the options to be compared with alternative options (including those being developed by other parties) in accordance with the requirements in paragraph 15(a)(i).

Comment [NG2]: Clarification or a definition of what is meant by early development of such options should be provided in order to ensure the scope of such work is limited to desk top studies.

Definitions

"SO-led Options" – any options to meet system needs identified by the licensee which had not been identified by other transmission licensees and any options recommended previously by the licensee in the NOA report to proceed but which have not been progressed by the transmission licensee to which the such recommendation was given. These could include (but are not limited to) cross-regional options (across more than one transmission area of the transmission owners); options that do not involve, or involve minimal, construction of new transmission capacity; options based on commercial arrangements with users to provide transmission services and balancing services; and, where appropriate, liaison with distribution licensees on possible distribution system solutions or other options.

Appendix 4 – Proposed amendments to Special Condition 6I

This is an amendment to SpC 6I of the TO's licences to implement our decision to use the SWW process as the trigger for Competitive Tender in RIIO-T1, as described in Chapter 3 of this document, and Chapters 2 and 3 of the Decision Document.

Text of the new condition

6I.40 Where the Authority receives notice from the licensee under paragraph 6I.36 of this condition ~~in relation to an additional-~~ to request that the Authority specify a new Strategic Wider Works Output, it may seek within such timescales as it considers appropriate any other analysis or information that the Authority considers relevant ~~to the Authority's assessment of the request and may specify timescales for the provision of this information such that it may be taken into account by the Authority for the purposes of reaching a determination under this paragraph. Subject to timely provision of such information by the licensee, and following consultation with such other parties as the Authority considers may be affected by its determination, the Authority will then determine, for provision within such timescales as it considers appropriate, for the purpose of the~~ Authority:

- (a) determining whether or not to commence a Competitive Tender; and
- (b) reaching determinations under paragraph 6I.42.

6I.41 When the Authority makes an initial decision to commence a Competitive Tender:

- (a) the Authority will notify the licensee of the Relevant Assets that will be subject to the proposed Competitive Tender;
- (b) in respect of the Relevant Assets, the licensee will comply with the pre-tender obligations in respect of the Relevant Assets of the licensee as set out in Special Condition 6M([title]); and
- (c) in respect of the proposed Strategic Wider Works Outputs excluding the Relevant Assets, the licensee must reassess the any proposed Strategic Wider Works Output notified under paragraph 6I.36 of this condition excluded from the Relevant Assets and either confirm, withdraw or amend that notification accordingly.

Comment [NG3]: What will govern this decision making by the Authority? Will this be set out in the tender regulations? If so can the condition refer to them here?

6I.42 Where, following an initial decision to commence a Competitive Tender, the Authority subsequently decides not to commence the Competitive Tender, or where the licensee (under paragraph 6I.41(bc) of this condition) amends the notification made under paragraph 6I.36 to reflect exclusion of the Relevant Assets from the proposed new Strategic Wider Works Output, the Authority will (subject to timely provision of information by the licensee, and following consultation with such other parties as the Authority considers may be affected by its determination) determine:

- (a) whether the needs case, technical scope and timing of Delivery are sufficiently well justified and represent long term value for money for existing and future consumers;

- (b) whether the licensee has developed a sufficiently robust development plan and risk sharing arrangements to Deliver the output efficiently;
- (c) whether there is a sufficiently advanced technical option(s) for the Authority to assess efficient costs and specify a Strategic Wider Works Output; and if so
- (d) the adjustment that is to be given effect through a modification under this Part F.

Appendix 5 – Proposed new condition 6M/6J

This is a new condition to implement the pre-tender activities policy, as described in Chapter 3 of this document, and Chapters 2 and 3 of the Decision Document.

As this condition is entirely new it is presented without strikethroughs or underlined additions, just as plain text. The form of this condition is drafted in line with that which would be included in NGET's licence, as SpC 6M. We intend to replicate the condition for the Scottish TOs in our statutory consultation, with any minor amendments needed to reference the different licences, as SpC 6J.

Text of the new condition

Introduction

6M.1 The purpose of this condition is to set out the obligations of the licensee to support commencement of a Competitive Tender for Relevant Assets ~~notified under 6I.36~~. This condition should be read in conjunction with Special Condition 2P regarding the conduct, business separation and information protection requirements of the licensee which apply during the period prior to commencement of a Competitive Tender.

Comment [NG4]: Suggest this wording is not needed as the assets are not Relevant Assets when notified under 6I.36. The assets only become relevant assets after Authority initial decision to tender

Part A: Obligations following the initial tender decision

6M.2 Where the Authority makes an initial decision to commence a Competitive Tender (an "initial tender decision"), it will direct the date by which the Final Tender Checkpoint will commence.

Comment [NG5]: What will govern this decision making by the Authority? Will this be set out in the tender regulations? If so can the condition refer to them here?

6M.3 In the period from the initial tender decision to commencement of the Final Tender Checkpoint, the licensee will:

- (a) undertake activity to produce the Tender Specification Outputs in the form and manner set out in Parts B and C of this condition, in preparation for commencement of the Final Tender Checkpoint; and
- (b) provide updates to the Authority regarding progress of the Tender Specification Outputs, in a form to the Authority's satisfaction, every 2 months and:
 - (i) as soon as reasonably practicable following the licensee becoming aware of a material change to the proposed Relevant Assets and/or the Tender Specification Outputs; and /or
 - (ii) as soon as reasonably practicable following a request to do so by the Authority.

Part B: Obligations during the Final Tender Checkpoint

- 6M.4 The licensee will submit the Tender Specification Outputs to the Authority in a timely manner and in any event by the date set for commencement of the Final Tender Checkpoint under paragraph 6M.2 of this condition.
- 6M.5 From the date of the Final Tender Checkpoint commencing until conclusion of the Final Tender Checkpoint, the licensee will:
- (a) provide responses to Authority enquiries regarding the Tender Specification Outputs and / or the Relevant Assets, in a timely manner;
 - (b) populate the Data Room with the Tender Specification Outputs and any other relevant information, including information arising from responses to Authority enquiries; and
 - (c) in responding to Authority enquiries, provide information which is accurate, complete and not misleading to the best of the knowledge and belief of the licensee, having made reasonable enquiries.
- 6M.6 Upon conclusion of the Final Tender Checkpoint, the Authority will notify the licensee of its final decision as to whether or not a Competitive Tender will be commenced.

Part C: Tender Specification Outputs requirements

- 6M.7 The Tender Specification Document must include:
- (a) as a minimum, the items specified in Schedule 1 of this condition; and
 - (b) any other information which the licensee considers relevant to the proposed Relevant Assets and the purpose of facilitating a Competitive Tender.
- 6M.8 The Tender Specification Data must include such of the items in Schedule 2 and any other data that the licensee considers applicable to the Relevant Assets.
- 6M.9 The Tender Specification Outputs are to:
- (a) be in a form which is to the satisfaction of the Authority and fit for the purpose of a Competitive Tender; and
 - (b) comprise information which is accurate, complete and not misleading to the best of the knowledge and belief of the licensee, having made reasonable enquiries.
- 6M.10 In undertaking activity to produce the Tender Specification Outputs, the licensee will do so:
- (a) in a timely, economic and efficient manner, having regard to the purpose of the Tender Specification Outputs to facilitate the Authority commencing and conducting a Competitive Tender; and

- (b) in a manner which, to the extent possible, facilitates the transfer of all necessary property, rights and liabilities in connection with the Relevant Assets to a CATO.

Part D: Definitions

6M.11 In this condition:

"CATO" means a competitively appointed Transmission Owner.

"Data room" means an electronic data room administered by the Authority for the purpose of a Competitive Tender.

"Final Tender Checkpoint" means a process conducted by the Authority to facilitate making a final decision to commence a Competitive Tender.

"Tender Specification Data" means data produced in connection with pre-construction/preliminary works activity in respect of the Relevant Assets.

"Tender Specification Document" means a tender specification document in respect of the Relevant Assets, which will be used (i) by the Authority to inform its decision whether or not to commence a Competitive Tender, and (ii) by participants in a Competitive Tender to inform tender bids.

"Tender Specification Outputs" means the Tender Specification Document and the Tender Specification Data.

Comment [NG6]: Will the tender regulations specify how this process is to be conducted? If so can the condition refer to them here?

Schedule 1 Tender Specification Document		
Item	Location	Document
1.	Tender Specification Document	Functional specification
2.	Tender Specification Document	Single line diagram
3.	Tender Specification Document	Conceptual project plan/ programme

4.	Tender Specification Document	Initial drawings/designs and specifications for major components
5.	Tender Specification Document	Initial plans and specifications for construction techniques, access and logistics
6.	Tender Specification Document	Summary of any early procurement or market engagement by the Transmission Owner
7.	Tender Specification Document	Summary of ground conditions and risk

Schedule 2 Tender Specification Data		
Item	Location	Document
1.	Data Room	Needs case report
2.	Data Room	Optioneering report
3.	Data Room	Detailed conceptual project plan/ programme
4.	Data Room	Records of supply chain engagement
5.	Data Room	Route corridor study report
6.	Data Room	Contracts, designs for any early procurement by the Transmission Owner
7.	Data Room	Reporting on any limitations arising from initial design choices
8.	Data room	Ground investigation report
9.	Data Room	Load flow system studies report
10.	Data Room	Contingency analysis report
11.	Data Room	Short circuit system studies report
12.	Data Room	Reactive Power and Voltage Control studies
13.	Data Room	Proposed outage schedule, and records of engagement between the Transmission Owner and System Operator
14.	Data Room	Details of Distribution Network Operator crossings including number of crossings and proposed outage plan
15.	Data Room	System models/data
16.	Data Room	System harmonics data (eg harmonic loci)
17.	Data Room	Information on Transmission Owner/System Operator interfaces, including draft interface agreements
18.	Data Room	Information on 3rd party Interfaces, including draft interface agreements

19.	Data Room	Geotechnical desk study data compilation, including assessment summary and recommendation for intrusive works
20.	Data Room	Peat slide risk assessment report and data
21.	Data Room	Phase 1 Contaminated land report
22.	Data Room	Preliminary Unexploded Ordnance/Unexploded Bomb risk assessment
23.	Data Room	Borrow pit assessment report
24.	Data Room	Targeted topographical survey report
25.	Data Room	Phase 1 Habitat Report
26.	Data Room	Protected species survey reports
27.	Data Room	Hedgerow survey reports
28.	Data Room	National vegetation classification survey report
29.	Data Room	Ornithological survey reports
30.	Data Room	Noise assessment report (initial and detailed design)
31.	Data Room	Flood risk assessment
32.	Data Room	Desk based archaeological assessment report
33.	Data Room	Initial access studies and feasibility
34.	Data Room	Traffic impact assessment
35.	Data Room	Approval in principle with relevant highways authorities
36.	Data Room	Offshore geotechnical report
37.	Data Room	Offshore geophysical report
38.	Data Room	Seabed bathymetric changes report
39.	Data Room	Metocean study
40.	Data Room	Cable burial risk assessment
41.	Data Room	Statement of community engagement, summary of (or copies of) consultation responses, community liaison group minutes
42.	Data Room	Application documents, draft development control order, summary of pre-application discussions, submissions and documents (eg gatecheck reports, written responses, inquiry reports)
43.	Data Room	Development consent orders or draft development consent orders, Section 37 consents and deemed planning consents, marine licences, planning consents for elements consented through the local planning authority/local authority
44.	Data Room	Environmental statement, environmental management plans (eg waste management plans, habitat management plans, visual impact mitigation schemes), statutory consultee responses, environmental liaison group minutes

45.	Data Room	Summary and list of finalised land agreements
46.	Data Room	Agreements in principle for land access
47.	Data Room	Information on progress made with voluntary land agreements
48.	Data Room	Details/status of any involuntary land agreements

Appendix 6 – Proposed new condition 2P/20

This is a new condition to implement the conflict mitigation arrangements, as described in Chapter 4 of this document, and Chapter 4 of the Decision Document.

As this condition is entirely new it is presented without strikethroughs or underlined additions, just as plain text. The form of this condition is drafted in line with that which would be included in NGET's licence, as SpC 2P. We intend to replicate the condition for the Scottish TOs in our statutory consultation, with any minor amendments needed to reference the different licences, as SpC 2O.

Text of the new condition

Introduction

- 2P.1 The purpose of this condition is to put in place arrangements to mitigate potential conflicts of interest ~~for-associated with~~ Competitive Tenders. This will be achieved through business separation requirements between the licensee and any Bidding Unit, the licensee's obligations as to its conduct in performing its Tender Support Activities in connection with a Competitive Tender, and the processes the licensee must follow to comply with these obligations.
- 2P.2 Part A sets out the overarching obligations on conduct of the licensee when undertaking its Tender Support Activities. Part B sets out the business separation requirements between the licensee and any Bidding Unit. Part C sets out the obligations on the licensee to restrict the use of information that the licensee has access to through its Tender Support Activities. Part D sets out the compliance methodology statement the licensee must publish to describe how it proposes to meet the obligations outlined in this condition. Part E sets out requirements on the licensee to appoint an independent compliance officer and to report on compliance against the licensee's duties.

Part A: Conduct of the licensee when undertaking its Tender Support Activities

- 2P.3 In performing its Tender Support Activities, the licensee must act in a manner which is transparent and intended to secure that neither the Bidding Unit nor any other participant in a Competitive Tender obtains an unfair commercial advantage (including any advantage from a preferential or discriminatory arrangement) in connection with a Competitive Tender, as a result of the licensee performing its Tender Support Activities.

Part B: Separation of the licensee and any Bidding Unit

- 2P.4 Without prejudice to the licensee's obligations under ~~standard~~ conditions B5 (Prohibition of cross-subsidies), ~~standard condition~~ B6 (Restriction on Activity and Financial Ring Fencing), ~~Special Condition~~ 2C (Prohibited Activities and Conduct of the Transmission Business), ~~Special Condition~~ 2N (Electricity Market Reform), and

Special Condition 20 (Business separation requirements and compliance obligations, and conduct of the System Operator in performing its Relevant System Planning Activities), the licensee must conduct its Tender Support Activities separately from any Bidding Unit.

- 2P.5 The licensee must ensure that persons engaged in the management or operation of the licensee (up to but not necessarily including the members of the licensee's board of directors) are not simultaneously engaged, either full or part time, in the management or operation of any Bidding Unit, other than in the provision of Shared Services provided by the licensee to its Associates and the provision of services which constitute de minimis business (as defined in standard condition B6 (Restriction on Activity and Financial Ring Fencing) to the extent that the provision of those services by the licensee complies with the requirements of standard conditions B5 (Prohibition of cross-subsidies), B6 (Restriction on Activity and Financial Ring Fencing) and B9 (Indebtedness).

Comment [NG7]: This term needs to be defined for the purposes of this condition either as per the definition in Special Condition 1A (currently for 2O only) or as in Special Condition 2N.

- 2P.6 The licensee must ensure that arrangements are in place which are effective in restricting access by persons engaged in the management or operation of any Bidding Unit to any part of any premises which is occupied by persons engaged in the management or operation of the licensee.

- 2P.7 The licensee must ensure that the systems for the recording, processing or storage of information relating to or derived from the TO-licensee performing Tender Support Activities, to which persons engaged in the management or operation of the licensee have access, cannot be accessed by persons engaged in the management or operation of any Bidding Unit.

- 2P.8 The licensee must ensure that:

- (a) a Bidding Unit does not comprise any person involved in Tender Support Activities, or in pre-construction activity in respect of the Relevant Assets, in each case from the date of final implementation of employee transfer restrictions, as agreed-specified in the licensee's approved compliance methodology statement, but in any event no later than 6 months prior to the date for commencement of the Final Tender Checkpoint as specified by the Authority in the notice made under Special Condition 6M.2; and
- (b) no person involved in the activities of a Bidding Unit transfers to that part of the licensee that is responsible for Tender Support Activities during the Competitive Tender.

Comment [NG8]: Given the restrictions that apply in respect of persons engaged in pre-construction activities, it is important that this term is appropriately defined. It is not currently clear what activities are caught by this term

- 2P.9 The licensee must notify the Authority of whether or not it or any Associate of the licensee intends to participate in a Competitive Tender as a bidder within 8 weeks of the direction given by the Authority under paragraph 6M.2 of Special Condition 6M-2, or such longer period as the Authority may direct under this condition, but in any event no later than 6 months prior to the date for commencement of the Final Tender Checkpoint as specified by the Authority in the notice made under paragraph 6M.2 of Special Condition 6M-2.

Comment [NG9]: The restriction should only apply in respect of persons moving from the bidding unit back to that part of the licensee that is engaged in Tender Support Activities given that this is where the sensitivity/perceived conflict exists. Restricting movement back to the licensee is far too broad, particularly given the duration of the tender process.

Comment [NG10]: National Grid could potentially bid to be a CATO from NGET or from a separate legal entity within the NG group

Part C: Restrictions on the use of information in connection with Tender Support Activities

2P.10 Any information held by the licensee relating to or deriving from its Tender Support Activities is to be treated as confidential information for the purpose of this condition. Accordingly, the licensee shall not (and procure that its Associates shall not) directly or indirectly disclose such information to or, or authorise use of such information to by any employees, agents, contractors, consultants and advisers of the Bidding Unit or any other participant in a Competitive Tender, other than as provided for in paragraph 2P.11.

2P.11 Paragraph 2P.10 shall not apply to the disclosure of confidential information:

- (a) where the licensee is specifically required to do so as a condition of this licence or under the tender regulations made under section 6C of the Act;
- (b) as required under the STC;
- (c) to persons engaged in the provision of Shared Services, to the extent necessary to allow them to carry out their respective functions to support the licensee in performing its Tender Support Activities; and
- (d) which is required by law or regulation, or the rules of any governmental or regulatory authority having jurisdiction over the licensee.

Comment [NG11]:
Might such information also need to be disclosed under or pursuant to the NOA?

Comment [NG12]: See comment above

Part D: Compliance Methodology

2P.12 Under paragraph 6I.40 of Special Condition 6I (title), where the Authority receives notice from the licensee under paragraph 6I.36 of Special Condition 6I to request that the Authority specify a new in relation to an additional Strategic Wider Works Output, the Authority may seek any other analysis or information that it considers relevant to its assessment of the request, and may specify timescales for provision of this information such that it may be taken into account for the purpose of determining whether or not to commence a Competitive Tender. When so requested by the Authority under paragraph 6I.40 of Special Condition 6I, the licensee must submit to the Authority:

- (a) a statement ("the compliance methodology statement"), describing the practices, procedures, systems and timescales by which the licensee will implement and secure compliance with each part of this condition;
- (b) the proposed form of the compliance report, as provided for in paragraph 2P.23; and
- (c) the proposed form of the compliance certificate, as provided for in paragraph 2P.23.

2P.13 Following receipt of the documents to be submitted under paragraph 2P.12, or any revisions of them as provided for in this paragraph and paragraph 2P.14, the Authority will, by the date of the direction given under paragraph 2 of Special Condition 6M-1 (notifying the licensee that it proposes to commence a Competitive Tender) either:

- (a) approve the (individual) documents and notify the licensee of each approval; or
- (b) give a direction to the licensee that any of the documents requires further development and the date by which the licensee is required to submit a revision to the Authority for approval.

2P.14 Following the Authority's approval of the documents submitted under paragraph 2P.12, the licensee must:

- (a) unless the Authority otherwise consents or directs, comply with the terms of the approved compliance methodology statement that set out how the licensee will secure compliance with Parts A,C,D and E of this condition at all times during the Competitive Tender;
- (b) where the licensee notifies the Authority under paragraph 2P.9 that it or any Associate of the licensee intends to participate in a Competitive Tender as a bidder, implement the procedures and systems by which the licensee will secure compliance with the business separation requirements under Part B of this condition, according to the timescales set out in the approved compliance methodology statement; and
- (c) review these documents and revise them as necessary, including when circumstances change such that the documents no longer secure compliance with this condition or when the Authority directs, to ensure that they continue to be complete and accurate in all material respects. The licensee must submit any revisions made to these documents to the Authority. Any revisions of these documents will only become effective once the Authority has approved them, in accordance with paragraph 2P.13.

Comment [NG13]: We now understand that this provision reflects intended policy but it appears inconsistent with paragraph 4.42 of the decision document which state that the approved methodology must only be implemented and complied with if the licensee indicates that it intends to bid under 2P.9.

Comment [NG14]: Will such duration be clearly defined in the regulations in order that this obligation is clear?

2P.15 The licensee must publish a copy of the approved compliance methodology statement and each revision of it on its website within 15 working days of its approval by the Authority.

Comment [NG15]: We have suggested an addition here to cater for future scenarios where the TO and SO may be in separate legal entities

Part E: Appointment of a compliance officer and compliance reporting for Competitive Tenders

2P.16 The licensee must ensure, following consultation with the Authority, that a competent person (who shall be known as the "compliance officer") is appointed for the purpose of facilitating compliance by the licensee with this condition. The person appointed as the compliance officer pursuant to this paragraph may also hold other compliance officer roles for the licensee or its Associates licensed under the Act or the Gas Act 1986.

Comment [NG16]: May wish to use a different term to distinguish the role from Special Condition 20

Comment [NG17]: Does this mean the board of directors of the Licensee? If yes suggest this is amended accordingly. If not, please clarify what is meant by the managerial board of the TO Should the SAD report to the Board of directors of the licensee (as suggested by 4.45 of the decision document) or the managerial board as is suggested here and at 4.27 and 28 of the consultation document?

2P.17 The licensee must appoint a Single Appointed Director, being a member of the managerial board for the Transmission Business, for the purpose of ensuring the performance of, and overseeing the duties and tasks of, the compliance officer set out in paragraph 2P.21 and the licensee's compliance with this condition the specified duties. The Single Appointed Director must report to the board of the licensee in relation to the obligations set out in this condition.

Comment [NG18]: Specified duties are not defined for the purposes of this condition in the same way that they are for Special Condition 20

2P.18 The licensee must ensure that the compliance officer:

- (a) is provided with such employees, premises, equipment, facilities and other resources; and
- (b) has such access to the licensee's premises, systems, information and documentation,

as, in each case, the compliance officer might reasonably require for the fulfilment of the duties and tasks assigned to him pursuant to this condition.

2P.19 Except to the extent provided for in paragraph 2P.16, the licensee must ensure that the compliance officer is not engaged in the management or operation of the Transmission Business or any Associate of the licensee.

2P.20 The licensee must make available to the compliance officer details of any complaint or representation received by it from any person in respect of the conduct of the licensee in undertaking the obligations in this condition-specified duties.

2P.21 The duties and tasks of the compliance officer must include:

- (a) providing advice and information to the licensee (including individual directors of the licensee) and the Single Appointed Director for the purpose of ensuring the licensee's compliance with this condition;
- (b) monitoring the effectiveness of the practices, procedures and systems adopted by the licensee to ensure its compliance with this condition the specified duties and described in the compliance methodology statement;
- (c) advising whether, to the extent that the implementation of such practices, procedures and systems require the co-operation of any other person, they are designed so as reasonably to secure the required co-operation;
- (d) investigating any complaint or representation made available to the compliance officer in accordance with paragraph 2P.20;
- (e) recommending and advising upon the remedial action which any such investigation has demonstrated to be necessary or desirable;
- (f) providing relevant advice and information to the licensee (including individual directors of the licensee) and the Single Appointed Director, for the purpose of ensuring its implementation of:
 - (i) the practices, procedures and systems adopted in accordance with the compliance methodology statement; and
 - (ii) any remedial action recommended in accordance with sub-paragraph (e);
- (g) reporting to the Single Appointed Director any instances of non-compliance which come to his attention, relating to a member of any of the managerial boards of the licensee, taking into account the interests of a business other

than that in respect of which the board of which he is a member of has been established; and

- (h) reporting to the Single Appointed Director as to the compliance officer's activities in respect of compliance with this condition to support the licensee to produce a compliance report under paragraph 2P.22.

2P.22 If the Authority so directs, and no later than 90 days following this direction, the licensee must produce, in a form approved by the Authority in accordance with paragraph 2P.12, a report ("the compliance report"):

- (a) as to its compliance with ~~this condition the specified duties~~ during the period since the last compliance report; and
- (b) as to its implementation of the practices, procedures and systems adopted in accordance with the compliance methodology statement.

2P.23 The compliance report produced in accordance with paragraph 2P.22 must in particular:

- (a) detail the activities of the compliance officer during the relevant period covered by the compliance report;
- (b) refer to such other matters as are or may be appropriate in relation to the implementation of the practices, procedures and systems described in the compliance methodology statement;
- (c) set out the details of any investigations conducted by the compliance officer, including:
 - (i) the number, type and source of the complaints or representations on which such investigations were based;
 - (ii) the outcome of such investigations; and
 - (iii) any remedial action taken by the licensee following such investigations; and
- (d) be accompanied by a certificate ("the compliance certificate"), in a form approved by the Authority in accordance with paragraph 2P.13, approved by a resolution of the board of the licensee and signed in good faith by the Single Appointed Director pursuant to that resolution, on the licensee's compliance with ~~this condition the specified duties~~. The compliance certificate should certify that, to the best of the Single Appointed Director's knowledge, information and belief, having made due and careful enquiry, the report of the compliance officer fairly represents the licensee's compliance with ~~this condition the specified duties~~.

2P.24 The licensee must, as soon as reasonably practicable, following the approval of the compliance certificate by the board of the licensee, and in any event no later than 120 days following the Authority's direction to produce a compliance report under paragraph 2P.22, submit to the Authority a copy of the compliance report

Comment [NG19]:

Reporting to the SAD must be done to support any compliance report directed by the Authority under 2P.22. but (see comment below) as drafted it will not be known with certainty whether or when production of a compliance report may be directed.

Comment [NG20]: It would be helpful to understand from Ofgem when they are likely to direct reports e.g. before tender? After tender? Timings could also do with clarifying –we believe the licensee will have 90 days to produce a report after direction, and then must submit the report/certificate approved by the board within 120 days of the original direction.

and compliance certificate produced in accordance with paragraphs 2P.22 and 2P.23, and publish copies of each of them on its website.

- 2P.25 The licensee must, if so directed by the Authority, appoint an Independent Examiner for the purpose of providing a written report to the Authority:
- (a) reviewing the practices, procedures and systems which have been implemented to secure compliance with this condition;
 - (b) assessing the appropriateness of such practices, procedures and systems for securing compliance with the licensee's obligations under this condition; and
 - (c) reporting on the licensee's compliance with the requirements of this condition.
- 2P.26 The Independent Examiner's report must be provided to the Authority within three working days of the licensee receiving it from the Independent Examiner.
- 2P.27 The Independent Examiner's report must be commissioned at such intervals as the Authority may direct.

Part F: Definitions

2P.28 In this condition:

"Tender Support Activities" means activities undertaken by the licensee through (i) performing the pre-tender support obligations set out in Special Condition 6M and /or (ii) performing obligations in connection with a Competitive Tender set out in tender regulations made under section 6C of the Act.

"Bidding Unit" means that part of the licensee or an Associate of the licensee group or business (including an associate of the licensee) that intends to participate, or is participating in, a Competitive Tender as a bidder.

Appendix 7 – Proposed amendments to Special Condition 1A

For the purpose of these proposed licence modifications, we have included any new defined terms used in the modified conditions in the dedicated 'definitions' condition for that section of the licence. They are included in the relevant draft conditions in Appendices 3 to 6.

Any new defined terms used in the modified licence conditions that are common to both the proposed 6M/6J and 2P/20 as well as our proposed amendments to 6I will be added to SpC 1A – Definitions and Interpretation. These are outlined below.

Definitions to be added to Special Condition 1A:

- **Competitive Tender** – a competitive process conducted in accordance with regulations made under section 6C of the Act, to grant an electricity transmission licence in respect of the construction and operation of Relevant Assets to a CATO.
- **Relevant Assets** – assets which the licensee has proposed for delivery of as prospective Strategic Wider Works Outputs (i) in respect of which the licensee has submitted a notification under paragraph 6I.36 and (ii) in connection with which the Authority proposes to commence a Competitive Tender.

Comment [NG21]: Also to be defined?

Comment [NG22]: Although defined in lower case for the purpose of the standard conditions, this terms is used and defined in condition B3 (Disposal of relevant assets...). May therefore wish to use an alternative term (Contestable Assets?)