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| Network Innovation Competition 2020 Supplementary Answer form | | |

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| Project Name | H100 Fife | | |
| Question number | #30 | Pro forma section | 7 |
| Question date | 24/09/20 | Answer date | 28/09/20 |
| Question summary | How can SGN Futures LTD own and operate hydrogen production if it is still the same company as SGN as a GDN? How does this avoid the need for further unbundling? | | |

## 

## Answer (please retain document formatting and do not exceed 2 pages unless otherwise agreed with Ofgem)

Appendix O of our submission and our response to SQ29 provides our full legal analysis carried out by Addleshaw Goddard LLP which details the analysis on unbundling (section 4 of the analysis).

Notwithstanding this, SGN Futures Limited will legally and functionally separate (“unbundled”) from Scotland Gas Networks plc (SGN). SGN will contract with SGN Futures Limited (on arm’s length terms) to produce hydrogen required for the H100 Fife project. As such, if the unbundling rules were deemed to apply SGN would be able to comply with them in full.

For ease, we have provided below an extract of section 4 of the legal analysis, which was provided in our response to SQ29, and which details why the unbundling certification requirement does not apply in relation to this project.

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| 4 | ***Gas Act (implementing the provisions of the Gas Directive 2009/73/EC)***  Whether the unbundling regime applies to the proposed project structure. | The unbundling regime does not apply given that ScGN does not carry out the transmission of gas.  ***Detail:*** In summary, the unbundling regime under the Gas Directive (as implemented in the Gas Act) provides for the separation of gas 'producers and suppliers' from the operation of transmission networks[[1]](#footnote-2).  There are two key elements to consider:  (a) is ScGN required to be certified as independent from 'producers and suppliers' under the Gas Act; and  (b) if so, is ScGN suitably independent/ unbundled from 'producers and suppliers'.  Turning to point (b) first, the definition of 'producer and supplier' covers an entity which produces any gas which is suitable for conveyance through pipes to premises (as SGN Futures will do) provided that it also meets one of three different requirements: (i) it requires a licence for gas supply or shipping; (ii) it would do so if those activities were carried out in GB; or (iii) the producer has a relationship with a certified person/ applicant (this would be ScGN) which might lead that person to discriminate in the producer's favour[[2]](#footnote-3). Under Option 1, SGN Futures would be producing gas and, although it would not require a supply or shipper licence or be carrying out equivalent activities outside GB, it could arguably benefit from favourable treatment discrimination by affiliate ScGN. So, limb (b) is satisfied.  It is limb (a) where the test falls down. The requirement is only for gas transporters who carry out the 'transmission of gas' (meaning "the transport of natural gas through a network, which mainly contains high-pressure pipelines, other than an upstream pipeline network and other than the part of high-pressure pipelines primarily used in the context of local distribution of natural gas, with a view to its delivery to customers, but not including supply").[[3]](#footnote-4) As such, the requirement relates to a TSO rather than a DNO such as ScGN. This means that, regardless of whether limb (b) is satisfied, the unbundling certification requirement does not apply. |

1. Section 8H of the Gas Act 1986. [↑](#footnote-ref-2)
2. Section 8Q of the Gas Act 1986. [↑](#footnote-ref-3)
3. Section 8C of the Gas Act and (by cross-reference) Article 2(3) of the Gas Directive. [↑](#footnote-ref-4)