



Making a positive difference
for energy consumers

Electricity distribution licensees
and other interested parties

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Date: 22 August 2019

Dear colleague,

Decision on proposed modifications to the Electricity Distribution Licence related to (a) licence applications from affiliates of existing distribution licensees and (b) competitive deployment of storage

In May 2019 we¹ published a statutory consultation on proposed modifications to the electricity distribution licence.² We requested views from relevant licensees and other interested parties on changes we considered necessary to address some of the consequences of an affiliate of an existing distribution licensee being granted an electricity distribution licence (an Affiliated Independent Distribution Network Operator or AIDNO).

Separate to the proposed modifications in respect of AIDNOs, the statutory consultation also contained proposed modifications relating to our decision on enabling the competitive deployment of storage in a flexible energy system.³ We considered these changes to be minor and that it would be a timely opportunity to seek to make them.

Following consideration of the responses to our statutory consultation, we have decided to implement the licence modifications as set out in the notice annexed to this letter. Our decision to make these licence changes will take effect from 17 October 2019.

Background

Distribution Network Operators (DNOs) are licensed by us to distribute electricity from the high voltage transmission grid to industrial, commercial and domestic users across Great Britain (GB).

Some types of work associated with obtaining a new connection can be provided by other parties (known as 'contestable work'). DNOs may carry out contestable works, but it is also open to Independent DNOs (IDNOs) and Independent Connection Providers (ICPs) to compete for this work.

IDNOs were introduced to open the electricity connections market to competition, ultimately with the aim to improve the quality of service received by connection consumers, reducing the cost of connections and encouraging the development of innovative connection

¹ The terms "Authority", "we" and "us" are used interchangeably in this document.

² <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-proposed-modifications-electricity-distribution-licence-related-licence-applications-affiliates-existing-distribution-licensees-and-b-competitive-deployment-storage>

³ <https://www.ofgem.gov.uk/publications-and-updates/decision-enabling-competitive-deployment-storage-flexible-energy-system-changes-electricity-distribution-licence>

services. IDNOs tend to own and operate smaller networks – typically, but not limited to, new housing and commercial developments. IDNOs are licensed to operate across GB and connect to the distribution network belonging to the DNO in whichever area of the country they are operating (the ‘host DNO’). In doing so, the IDNO is responsible for the ongoing ownership and operation of, the final part of the network to the end user. Like DNOs, IDNOs are licensed by us but a number of the standard distribution licence conditions are not in effect, or have been modified, in their licence.⁴

Our decision making process

We were approached in 2018 about the potential for an affiliate of an existing DNO to apply for an electricity distribution licence – and subsequently operate as an IDNO.

We published an open letter in July 2018 on such applications and invited views on the potential implications of this and what effect it might have on consumers.⁵ We also asked for views on what, if any, additional measures might be appropriate were such licences to be granted.

After considering the responses received and the potential effects of granting licences to such parties, we published an update in December 2018.⁶ This set out our view that, while it could further increase competition in connections, there was a significant risk that (in the absence of appropriate protective measures) competition could be distorted through the actions or behaviour of the relevant DNO. For example, by giving some undue preference to the AIDNO and / or sharing commercially sensitive information with the AIDNO that is not also disclosed to other market participants (in particular competitors of the AIDNO).

We said, therefore, that some modifications would likely be required to the electricity distribution licence to mitigate the potential risks that had been identified. These modifications would be designed to protect consumers’ interests and would exist alongside the protections already offered by competition law. We signalled our intention to consult on the modifications in early 2019. We published a consultation on the proposed licence modifications on 13 February 2019 (our February consultation).⁷

Our February consultation closed on 13 March 2019. Following our review of consultation responses and having reflected further, we considered it more appropriate to implement the proposed modifications via the introduction of a new Standard Licence Condition (SLC) as opposed to the approach that had been set out in our February consultation which was to modify a number of different standard licence conditions. In substantive terms, the scope of the modifications was broadly the same with some limited differences. In our view, such an approach would make the scope of the proposed obligations clearer and reduce the risk of unintended consequences. We then published the statutory consultation on our proposals in May 2019.

Review of industry responses

We received nine responses to the statutory consultation. We have published the non-confidential responses on our website alongside this decision.

Respondents were generally supportive of the changes we made since our February consultation. One respondent noted that a principles based approach was sensible and proportionate while providing greater options for regulatory compliance monitoring and

⁴ ICPs can also carry out contestable works but they do not retain the network they build. DNOs and IDNOs compete for the long-term ownership and operation of the network upon completion by the ICP. We do not license ICPs but they are accredited under the National Electricity Registration Scheme operated by Lloyd’s Register. We have referenced ICPs here for completeness but do not consider them further in this decision.

⁵ <https://www.ofgem.gov.uk/publications-and-updates/independent-distribution-network-operators-licence-applications-affiliates-existing-licensees>

⁶ <https://www.ofgem.gov.uk/publications-and-updates/update-our-consultation-electricity-distribution-licence-applications-affiliates-existing-licensees>

⁷ <https://www.ofgem.gov.uk/publications-and-updates/affiliates-existing-licensees-informal-consultation-proposed-modifications-electricity-distribution-licence>

enforcement. In their view, it therefore marked an improvement over the original proposal. Another respondent noted that the changes would provide clarity over the application and intent of the new licence condition. Some respondents did however maintain previous concerns about the application of the licence condition and whether this should be limited to the DNO's Distribution Services Area (DSA) or apply across GB.

One respondent repeated their comments in response to our February consultation that without physical separation between the DNO and AIDNO, there will always be the possibility of interactions between staff of the affiliate IDNO and its parent DNO. Another said it was important to recognise that DNOs are monopoly providers and should not be entitled to have AIDNOs.

This comment appears to assume that an AIDNO would always be a subsidiary of a DNO. We do not believe this to be the case and, in any event we would note that, irrespective of the corporate relationship between a DNO and AIDNO, the DNO would be obliged to put in place the necessary arrangements to ensure compliance with the new licence condition including having an appropriate degree of separation.

All respondents supported the housekeeping changes we proposed in respect of the competitive deployment of storage.

We have set out the themes that emerged from responses in Annex 1 to this letter where we also provide our views on those comments.

Our decision

Having considered the responses received to our statutory consultation, we have decided to proceed with the proposed modifications to the electricity distribution licence as set out below and in the attached annex.

A new licence condition will be added as SLC42A which will require the licensee, where it has an affiliate that is a distribution licensee (but is not a Distribution Services Provider), and in relation to activities in its Distribution Services Area, to:

- manage and operate its Distribution Business in such a way that is calculated to ensure that that it does not restrict, prevent or distort competition such that an AIDNO is or may be advantaged as compared to any other Electricity Distributor
- prohibit the disclosure of Confidential Information by the licensee to the AIDNO except where that information is available to other electricity distributors on an equal basis or been identified as information to which the AIDNO is permitted access
- have in place a compliance statement (approved by the Authority) setting out how it will achieve compliance with the obligation not to disclose Confidential Information, including maintaining full managerial and operational independence of the Distribution Business from the AIDNO and managing the transfer of employees from the Distribution Business to the AIDNO
- appoint a sufficiently independent and competent person who will act as the AIDNO Compliance Officer and who will be responsible for reporting annually to the licensee's directors on compliance with the condition
- prepare an AIDNO Compliance Report (after receiving the AIDNO's Compliance Officer's report) setting out the licensee's compliance including details of any investigations conducted by the Compliance Officer. A copy of the licensee's report must be provided to the Authority and published on the licensee's website.

We will also modify SLC31C and SLC43 to make a minor housekeeping change to align the wording of changes that were implemented previously. That is, replacing 'Relevant Licence Holders' with 'Relevant Undertakings' in both licence conditions.

Structure of this decision document

There are two annexes to this letter with three schedules attached:

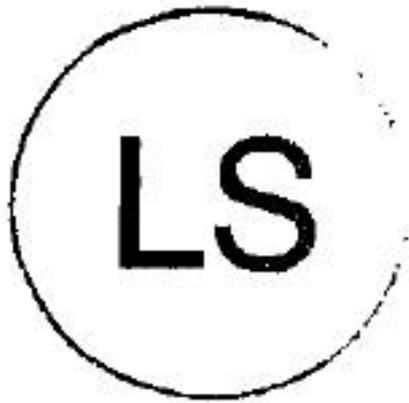
- Annex 1 to this letter sets the responses to the statutory consultation and our views.
- Annex 2 sets out the Notice of our decision to modify the Electricity Distribution Licence.
- Schedules 1 and 2 sets out the changes to the Electricity Distribution Licence.
- Schedule 3 contains a list of all relevant licence holders.

Next steps

We have published our decision notice on our website alongside this letter. The new licence conditions will come into effect on 17 October 2019.

Yours faithfully,

Eleanor Warburton
Deputy Director, ESO and Gas Systems, Systems and Networks



Annex 1: summary of consultation responses and our views

Responses to the statutory consultation are summarised below with our views on those comments.

Application of the licence condition

Respondents' views

Two respondents disagreed with the application of the proposed licence condition being limited to the licensee's activities in its DSA only. They considered that the application of any new licence condition should depend on the extent to which an AIDNO can use commercially confidential information belonging to the DNO to its advantage in the national connections market. They believed that that some confidential information is national in its nature such as intellectual property, IT systems and charging expertise. Similarly, the information a DNO holds concerning the costs of materials such as cable, transformers and other equipment may have a value to an AIDNO in respect of activities outside of the DNO's DSA. Taken together, the respondent's views were that this could provide an AIDNO with significant benefits, as compared to a hypothetical new entrant (with no affiliate DNO relationship). One of the respondents noted that general competition law and the special responsibility when in a dominant position not to distort competition may not extend to operations outside its DSA.

One other respondent raised two drafting queries. First, whether paragraphs 1 and 2 of the condition had the same effect. Second, that the use of "may" in SLC 53.3 introduced unnecessary ambiguity in how the condition would be applied and was not present in the initial proposals for SLC 4.

Our view

We set out in the statutory consultation that provided the AIDNO wasn't afforded an unfair advantage as a result of its relationship to the DNO then, in our view, it is in the interests of consumers to allow increased competition (across GB) between DNOs and IDNOs. In our view, any advantage that the AIDNO might obtain (and therefore, risk to effective competition) stems from abuse of the monopoly position that the DNO has in respect of its own DSA. We do not have evidence to suggest that the DNO would have any meaningful ability or incentive to provide an advantage to an AIDNO based on the DNO's activities outside of its DSA. As such, the scope of the licence condition was structured as to prevent distortions of competition arising from the DNOs' activities in respect of its DSA. We also said that additional restrictions on where an AIDNO can operate could stifle competition and reduce customer choice (eg, where potential projects cross DSA boundaries).

To the extent that the respondent's concern was that the disclosure of information (related to the DNO's activities in its DSA) would have a commercial value to the AIDNO in a wider (eg national) context, such concerns would be addressed by the new licence condition. The definition of Confidential Information is information relating to, or derived from, the DNO's Distribution Business. The DNO is not permitted to disclose such information to the AIDNO irrespective of where the AIDNO intends to operate (inside or outside of the DNO's host area). We agree with the observation that competition law (in particular, the abuse of dominance rules) may not extend outside the Distribution Services Area of the relevant DNO. This simply reflects the fact that those provisions only apply as and when an undertaking is dominant.

On the suggested drafting changes, paragraphs 1 and 2 of the condition provide for different things. Paragraph 1 sets out the circumstances when a DNO would be bound by the obligation i.e. when it has an AIDNO. Paragraph 2 specifies the geographical scope of its application i.e. it will only apply in relation to the DNO's activities within its DSA (and not outside of its 'host DNO area'). We do not consider that the suggested drafting changes to these paragraphs would improve the drafting and as such, have decided to retain the drafting as set out in the statutory consultation.

In relation to paragraph 3, we do not agree that the drafting is ambiguous or has an effect wider than the more general drafting in SLC 4. The inclusion of the additional words “*such that an Affiliate IDNO is or may be disadvantaged ...as compared to any other Electricity Distributor*” is designed to give specificity as to the particular type of distortions of competition that will trigger the application of the licence condition. The use of the word “may” ensures that any restriction or distortion of competition does not need to have materialised or be proven to have materialised before the prohibition will be engaged. This is consistent with the scope of the prohibition set out in SLC 4.

Branding

Respondents’ views

Two respondents were also concerned that shared branding was not fully considered in the proposed licence condition. They considered that branding could influence decision making and should therefore be considered an asset and subject to appropriate ring-fencing measures.

Our view

With regards to branding, we have not seen any evidence to suggest that it would be proportionate or necessary to require separate branding between the DNO and AIDNO in addition to the protections that will be offered by the new licence condition and competition law.

Potential for dual regulatory regime

Respondents’ views

One respondent believed that the proposal as drafted would introduce a dual regulatory regime. They believed that relying on competition law plus the proposed licence condition would be problematic due to the different evidential standards needed in each case.

Our view

We note the comments made as regards a dual regulatory regime and observe that the introduction of the proposed licence modifications would not alter the existing position which is that licensees are already bound by obligations under the licence and competition law. We consider therefore that our proposed approach does not introduce any different arrangements to those that already exist today.

Prohibition of cross-subsidy

Respondents’ views

One respondent highlighted the licence already requires licensees to ensure that in carrying on its activities that the Distribution Business does not give any cross-subsidy to, or receive any cross-subsidy from, any other business including any Affiliate or Related Undertaking.

Our view

We agree that SLC 4.9 would operate so as to require the DNO to ensure that in carrying out its activities that the Distribution Business must not give, or receive, any cross-subsidy to, or from, an AIDNO. Whilst the definition of Distribution Business includes the activities of Affiliates in certain contexts (as set out on in paragraphs (a) and (c) of the condition), this would not capture the activities of an AIDNO as the AIDNO would not be distributing electricity through, or providing connections to, the DNO’s Distribution System (rather it would be connecting to and distributing electricity through its own Distribution System(s)).

Interaction with industry codes

A respondent noted that the proposed condition does not set out any provisions for how voting power would be assigned to an AIDNO in each industry code. They felt that clear separation would allow expression of specific views and would not be restricted or subjected to internal influences. They also set out their view that an AIDNO is neither a DNO nor IDNO and should not be treated as such.

Our view

The relevant code modification processes, including voting procedures, is set out in each of the relevant industry codes. As stated previously, we do not consider it necessary or appropriate for us to seek to prescribe how the voting procedures should operate under the codes. To the extent that modifications are considered necessary to reflect the emergence of AIDNOs, it is open to signatories to the codes to propose further changes via the modifications process set out in the codes.

On the distinction between an AIDNO and IDNO, we have used the term AIDNO (and Affiliate IDNO in the proposed SLC) as way of distinguishing these parties for the purpose of discussing our proposed change. However, we expect that an AIDNO, if granted an electricity distribution licence, would be subject to the amended SLCs in place for other IDNOs (eg, BA2). An AIDNO is likely to also have a number of other conditions switched on or off in keeping with other IDNOs. In this regard, we see no difference between an IDNO that is affiliated to an existing licensee compared to one that is not.

Compliance statement

Respondents' views

Two respondents noted that DNOs are already required to have a Compliance Statement and Officer in place under SLC 42 and in their view, new, separate arrangements would place an unnecessary, administrative burden on licensees. They considered that the existing Compliance Statement and role of Compliance Officer could be amended to meet the new requirement.

One respondent commented that the AIDNO should also be required to appoint a Compliance Officer. They should also publish a separate, publically available Compliance Statement. Furthermore, they believed that the use of "detail" rather than "set out" would help avoid any ambiguity in the content of the Compliance Statement.

Our view

The overlap between the Compliance Statement and Compliance Officer required under SLC 42 and this new licence condition is explicitly recognised in the licence condition itself. Paragraph 5 provides "*The AIDNO Compliance Statement may be in the same or substantially similar form to the Compliance Statement prepared under condition 42*". Paragraph 14 makes a similar provision in relation to the Compliance Officer. In our view, this minimises any administrative burden on licensees, the extent of which need not be any greater than if the requirement was included within the scope of SLC 42. As such, we do not agree that a separate AIDNO Compliance Statement would be confusing or overly burdensome, rather it helps transparency.

We previously considered the introduction of reciprocal obligations on AIDNOs. Our view was (and continues to be) that introducing a new obligation on the DNO is a targeted and proportionate solution given that the risks identified relate to the distortion of competition (between distribution licensees) as a result of the actions of the DNO. We have not received any new evidence to change this view.

The use of words "set out" is consistent with the current drafting of SLC 42 and has not caused any problems as regards interpretation to date. While we see merit in avoiding

ambiguity where possible, we note that the Compliance Statement must also be approved by us so we could reject if we considered it was too vague. A further change to the wording of the proposed condition is therefore not necessary.

Compliance monitoring

Respondents' views

One respondent said it was important that there are adequate frameworks in place to ensure effective monitoring and regulatory scrutiny to prevent the distortion of competition in the sector. They were concerned with the level of resource required to do this effectively.

Another respondent questioned how the companies can demonstrate that the policies described in the Compliance Statement will be implemented and their effectiveness monitored. Two respondents called for a rigorous monitoring regime to be put in place as a preventative measure, rather than relying on complaints from other parties after the event.

Our view

We agree with the need for effective monitoring to ensure that consumers' interests are protected. We previously set out a number of means by which we already monitor compliance. We have existing controls in place to undertake monitoring activities, request information and investigate suspected breaches of licence conditions in accordance with our enforcement guidelines and powers under competition law. We also have the right to undertake reviews to make further changes to the licence should concerns arise.

The obligations in the licence condition itself also contribute to the monitoring of compliance by the licensee. The Compliance Officer (who must be sufficiently independent from the DNO) must report annually on the implementation of the compliance statement. The licensee must also submit a report based on the Compliance Officer's findings to us and publish it online. We consider that this is an appropriate means of demonstrating effective implementation of the policies described in the Compliance Statement. This framework will complement our own monitoring activities.

Drafting

Respondents' views

In addition to the comments set out above, a number of respondents suggested some minor changes to the drafting of the new licence condition.

Our view

We agree that these other changes are appropriate and set them out in more detail below. We consider these changes do not change the substance or intent of the proposed modifications as set out in the statutory consultation but are helpful in clarifying the proposed text.

Changes to the proposed licence drafting since the statutory consultation

The changes are as follows:

- Renumber the new licence condition as SLC 42A. This is to include the condition within the chapter of the distribution licence which contains the conditions relating to the Independence of the Distribution Business.
- Remove a superfluous comma in SLC53.4.
- Change text in SLC 53.14 from "under condition 43" to "under standard condition 43".

The changes are highlighted in Schedule 2 attached to this letter.

Annex 2: notice of decision to modify the electricity distribution licence

To: All holders of an electricity distribution licence

Electricity Act 1989 Section 11A(1)(b)

Modification of the standard conditions of all electricity distribution licences

1. Each of the licensees to whom this document is addressed has a distribution licence which has been granted or treated as granted under section 6(1)(c) of the Electricity Act 1989 (the Act).
2. Under section 11A(2) of the Act, the Gas and Electricity Markets Authority ('the Authority') gave notice on 31 May 2019 ('the Notice') that we proposed to modify standard conditions 31C 'Appointment of Compliance Officer' and 43 'Appointment of Compliance Officer', and insert a new standard condition 53 'Affiliate independent distribution network operators', in the manner set out in the Notice. We stated that any representations to the modification proposal were to be made on or before 28 June 2019.
3. A copy of the Notice was sent to the Secretary of State in accordance with section 11A(4)(b) of the Act, and we have not received a direction that the change should not be made.
4. We received nine responses to the Notice, each of which we carefully considered. We have placed all non-confidential responses on our website. Our response to these comments is set out in the accompanying letter.
5. It is necessary to make a few minor alterations to the modifications set out in the Notice for clarification purposes. These are highlighted in the Schedules attached to this Notice. None of these modifications alter the substance or effect of the proposed modifications.
6. We are making the modification to standard conditions 31C and 43 to align with the wording of modifications that were implemented previously.⁸ That is, replacing 'Relevant Licence Holders' with 'Relevant Undertakings' in both licence conditions.
7. With regards to standard condition 42A (which was proposed as SLC 53 in the Notice), we are making the modification to ensure that the licence better protects consumers' interests and competition in the distribution sector in the event of an affiliate of an existing distribution licensee being granted an electricity distribution licence to operate as an IDNO. In the absence of the proposed modifications, we consider that a distribution licensee may be able to act in a manner that unduly favours its affiliate distribution licensee eg by sharing confidential information with the affiliate distribution licensee (AIDNO). This could have the effect of placing such AIDNOs at a competitive advantage as compared to other distribution licensees. Such distortion of competition would not be in the interests of consumers.
8. The effect of these modifications will be to require the licensee, where it has an affiliate that is a distribution licensee (but is not a Distribution Services Provider) and in relation to activities in its Distribution Services Area, to:
 - manage and operate its Distribution Business in a way that is calculated to ensure that it does not restrict, prevent or distort competition such that an AIDNO is or may be advantaged as compared to any other Electricity Distributor

⁸ <https://www.ofgem.gov.uk/publications-and-updates/decision-enabling-competitive-deployment-storage-flexible-energy-system-changes-electricity-distribution-licence>

- prohibit the disclosure of Confidential Information by the licensee to the AIDNO except where that information is available to other electricity distributors on an equal basis or been identified as information to which the AIDNO is permitted access
 - have in place a compliance statement (approved by the Authority) setting out how it will achieve compliance with the obligation not to disclose Confidential Information, including maintaining full managerial and operational independence of the Distribution Business from the AIDNO and managing the transfer of employees from the Distribution Business to the AIDNO
 - appoint a sufficiently independent and competent person who will act as the AIDNO Compliance Officer and who will be responsible for reporting annually to the licensee's directors on compliance with the condition
 - prepare an AIDNO Compliance Report (after receiving the AIDNO's Compliance Officer's report) setting out the licensee's compliance including details of any investigations conducted by the Compliance Officer. A copy of the licensee's report must be provided to the Authority and published on the licensee's website.
9. Where an application for permission to appeal our decision is made to the Competition and Markets Authority (CMA) under section 11C of the Act, Rule 5.7 of the Energy Licence Modification Appeals: Competition and Markets Authority Rules⁹ requires that the appellant must send to any relevant licence holders who are not parties to the appeal a non-sensitive notice setting out the matters required in Rule 5.2. The attached Schedule 3 provides a list of the relevant licence holders in relation to this modification. Section 11A(10) of the Act sets out the meaning of 'relevant licence holder'.

Under the powers set out in section 11A(1)(b) of the Act, we hereby modify the standard licence conditions for all electricity distribution licences in the manner specified in attached Schedule 1. This decision will take effect from 17 August 2019.

This document is notice of the reasons for the decision to modify the electricity distribution licences as required by section 49A(2) of the Act.

The Official Seal of the Gas and Electricity Markets Authority here affixed is authenticated by

**Eleanor Warburton
Deputy Director, ESO and Gas Systems, Systems and Networks
Duly authorised on behalf of the Gas and Electricity Markets Authority**

⁹ CMA70 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655601/energy-licence-modification-appeals-rules.pdf

Schedule 1: modifications to the Electricity Distribution Licence related to storage

SLC 31C – Appointment of Compliance Officer

31C.13 For the purposes of this condition, Relevant Obligations means:

(a) the requirements of standard condition 31B (Independence of Distribution Business and restricted use of Confidential Information);

and, so far as they relate to relationships with Relevant Undertakings ~~License Holders~~ within the meaning of standard condition 31B, the requirements of:

(b) paragraph 9 of standard condition 4 (No abuse of the licensee's special position) (which prohibits cross-subsidy between the licensee's Distribution Business and any other business of the licensee or of an Affiliate or Related Undertaking of the licensee); and

(c) Paragraph 1 of standard condition 19 (Prohibition of discrimination under Chapters 4 and 5) (which prohibits the licensee from discriminating between any person or class or classes of persons when providing Use of System or connections or carrying out works for the purposes of connection).; and

(d) the requirements of standard condition 31D (Prohibition on Generating by Licensee).

SLC 43 – Appointment of Compliance Officer

43.12 For the purposes of this condition, Relevant Requirements means:

(a) the requirements of standard condition 42 (Independence of Distribution Business and restricted use of Confidential Information);

and, so far as they relate to relationships with Relevant Undertakings ~~License Holders~~ within the meaning of standard condition 42, the requirements of:

(b) paragraph 9 of standard condition 4 (No abuse of the licensee's special position) (which prohibits cross-subsidy between the licensee's Distribution Business and any other business of the licensee or of an Affiliate or Related Undertaking of the licensee);

(c) paragraph 1 of standard condition 19 (Prohibition of discrimination under Chapters 4 and 5) (which prohibits the licensee from discriminating between any person or class or classes of persons when providing Use of System or connections or carrying out works for the purposes of connection); and

(d) paragraphs 1 and 3 separately of standard condition 41 (Prohibition of discrimination under Chapter 9) (which prohibit the licensee from discriminating between any person or class or classes of persons when providing, respectively, Legacy Metering Equipment and Data Services).; and

(e) the requirements of standard condition 43B (Prohibition on Generating by Licensee).

Schedule 2: modifications to the Electricity Distribution Licence related to AIDNOs

Changes from the statutory consultation are highlighted in yellow.

SLC 42A – Affiliate independent distribution network operators

Application

42A.1 This condition applies in the event that the licensee has an Affiliate which also holds a distribution licence **and** such Affiliate is not a Distribution Services Provider (an “Affiliate IDNO”).

42A.2 This condition only applies in relation to the licensee’s activities in its Distribution Services Area.

General obligation

42A.3 The licensee must at all times manage and operate the Distribution Business in a way that is calculated to ensure that it does not restrict, prevent or distort competition such that an Affiliate IDNO is or may be advantaged as compared to any other Electricity Distributor or an Electricity Distributor is or may be disadvantaged as compared to the Affiliate IDNO.

Specific Obligations

Restricted use of Confidential Information

42A.4 The licensee must put in place and at all times maintain managerial and operational systems that prevent any Affiliate IDNO from having access to Confidential Information except and to the extent that such information:

- a) is made available on an equal basis to all Electricity Distributors;
- b) is referable to a customer who at the time to which the information relates was a customer of the Affiliate IDNO; or
- c) is of a type that has been confirmed by the Authority in writing as corporate information.

Compliance Statement must always be in place

42A.5 Except with the Authority’s consent, the licensee must at all times have in place an Affiliate IDNO Compliance Statement, approved by the Authority, that describes practices, procedures, and systems which the licensee has adopted (or intends to adopt) to ensure compliance with paragraph **42A.4**. The AIDNO Compliance Statement may be in the same or substantially similar form to the Compliance Statement prepared under condition 42.

42A.6 If the Authority does not direct the licensee to amend the Affiliate IDNO Compliance Statement within 60 days of receiving it, the statement is to be treated as approved by the Authority.

42A.7 The licensee must take all reasonable steps to ensure that it complies with the terms of the Affiliate IDNO Compliance Statement put in place under this condition.

Specific contents of the Compliance Statement

42A.8 The Affiliate IDNO Compliance Statement must, in particular, set out how the licensee will:

- a) maintain the full managerial and operational independence of the Distribution Business from the Affiliate IDNO; and
- b) manage the transfer of employees from the Distribution Business to an Affiliate IDNO.

42A.9 The Affiliate IDNO Compliance Statement must also ensure that any arrangements to which the licensee is party that fall within any of the descriptions given in paragraph **42A.10** below are such as to prevent any breach of the requirements of paragraph **42A.4** above.

42A.10 The arrangements referred to in paragraph **42A.9** are those that enable any Affiliate IDNO, or any person engaged in or in respect of the activities of such an Affiliate IDNO, to have any use of or access to:

- a) premises or parts of premises occupied by persons engaged in, or in respect of, the management or operation of the Distribution Business;
- b) systems for recording, processing, or storing data to which persons engaged in, or in respect of, the management or operation of the Distribution Business also have access;
- c) equipment, facilities, or property employed for the management or operation of the Distribution Business; and
- d) the services of any persons who are (whether or not as their principal occupation) engaged in, or in respect of, the management or operation of the Distribution Business.

Revision and publication of Compliance Statement

42A.11 The licensee may, with the Authority's approval, revise an Affiliate IDNO Compliance Statement prepared in accordance with paragraph **42A.5**.

42A.12 The licensee must publish a copy of every Affiliate IDNO Compliance Statement prepared in accordance with paragraph **42A.5** or revised in accordance with paragraph **42A.11**) on its website within 21 days of its approval by the Authority.

Compliance Officer

42A.13 The licensee must ensure, following consultation with the Authority, that a competent person (who is to be known as the AIDNO Compliance Officer) is appointed for the purposes of facilitating the licensee's compliance with the requirements of this condition.

42A.14 Subject to paragraph **42A.16**, the licensee shall be entitled to appoint the same person to act as the AIDNO Compliance Officer as it has appointed to act as the Compliance Officer under **Standard Condition** 43.

42A.15 The licensee must at all times ensure that the AIDNO Compliance Officer is engaged for the performance of such duties and tasks as the licensee considers it appropriate to assign to him for the purpose specified in paragraph **42A.13** including but not limited to reporting annually to the licensee's directors about his activities during the period covered by the report.

42A.16 The licensee must ensure that the AIDNO Compliance Officer is sufficiently independent, adequately resourced and provided such access to premises, systems, information and documentation as is needed for the fulfilment of duties and tasks assigned to him.

42A.17 The licensee must, after receiving each annual report of the AIDNO Compliance Officer, produce a report (the "AIDNO Compliance Report") about its compliance during the relevant year with the requirements under this condition and its implementation of the practices, procedures and systems adopted in accordance with the Affiliate IDNO Compliance Statement. It must also set out details of any investigations conducted by the Compliance Officer.

42A.18 The licensee must provide the Authority a copy of every AIDNO Compliance Report and publish each such report on, and in a way that is readily accessible from, its website.

Derogation

42A.19 The Authority may (after consulting the licensee and, where appropriate, any other materially affected party) issue a direction ('a derogation') to the licensee that relieves it of its obligations under this condition to such extent, for such period of time, and subject to such conditions as may be specified in the direction.

Interpretation

42A.20 For the purposes of this condition:

Affiliate IDNO	has the meaning set out in paragraph 42A.1 ;
Affiliate IDNO Compliance Statement	means the compliance statement to be prepared under paragraph 42A.5 ;
AIDNO Compliance Officer	means the compliance officer appointed by the licensee in terms of paragraph 42A.13 ;
Confidential information	means information relating to, or derived from, the DNO's Distribution Business that is not published or otherwise legitimately in the public domain.

Schedule 3: Relevant Licence Holders

Eclipse Power Networks Limited	Eastern Power Networks Plc
Energetics Electricity Limited	Electricity North West Limited
Energy Assets Networks Limited	London Power Networks Plc
Energy Assets Fibre Networks Limited	Northern Powergrid (Northeast) Limited
ESP Electricity Limited	Northern Powergrid (Yorkshire) Plc
Fulcrum Electricity Assets Limited	Scottish Hydro Electric Power Distribution Plc
Harlaxton Energy Networks Limited	South Eastern Power Networks Plc
Independent Power Networks Limited	Southern Electric Power Distribution Plc
Leep Electricity Networks Limited	SP Distribution Plc
Murphy Power Distribution Limited	SP Manweb Plc
The Electricity Network Company Limited	Western Power Distribution (East Midlands) Plc
UK Power Distribution Limited	Western Power Distribution (South Wales) Plc
Utility Assets Limited	Western Power Distribution (South West) Plc
Vattenfall Networks Limited	Western Power Distribution (West Midlands) Plc

Electricity licence holders are listed at: <https://www.ofgem.gov.uk/publications-and-updates/all-electricity-licensees-registered-addresses>.