

**The provision of non-contestable connection
services by DNOs: Amending Licence
Condition 4C of the Electricity Distribution
Licence**

Consultation Document

March 2005 68/05

Summary

This document follows Ofgem's recently concluded Competition Act 1998 investigation into the provision of non-contestable connection services by United Utilities Electricity (UUE) to its affiliated connections business United Utilities Networks (UUN).

While there were insufficient grounds to find that UUE had breached the provisions of the Competition Act 1998, the investigation highlighted that UUE had in place different arrangements for the provision of POC information to other connection providers compared to those which it operated for its own connections business (UUN). The investigation also identified a need for Distribution Network Operator(s) (DNO(s)) to maintain good records of their work processes relating to the provision of connections quotations and other Point of Connection (POC) information required by competing connection providers.

In light of the investigation's findings, Ofgem considers that the current provisions of the electricity distribution licence, in particular, licence condition 4C (Non Discrimination in the Provision of Use of System and Connection to System) do not adequately address situations where a Distribution Network Operator has in place different arrangements for the provision of non-contestable information/services for affiliated and non affiliated connections providers that might adversely affect an Independent Connection Provider's (ICP's) ability to compete with the DNOs own affiliated connections provider.

Consequently, Ofgem considers that licence condition 4C should be amended to better facilitate the effective development of competition in the provision of electricity connections and this document outlines possible options for such an amendment.

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1. Introduction

- 1.1. This document describes Ofgem's proposal to amend standard condition 4C (Non Discrimination in the Provision of Use of System and Connection to System) of the electricity distribution licence.
- 1.2. Ofgem has recently concluded a Competition Act 1998 investigation into the provision of non-contestable connection services by UUE to its affiliated connections business UUN.
- 1.3. Ofgem concluded that while there were insufficient grounds to find that UUE had breached the provisions of the Competition Act 1998, the investigation highlighted that connections providers not affiliated to UUE incurred significant delays in the provision of POC information. These delays did not appear to have been faced by UUE's affiliate connections provider, UUN to the same extent.
- 1.4. As a result of the UUE investigation Ofgem considers that the current provisions of the electricity distribution licence, in particular, licence condition 4C (Non Discrimination in the Provision of Use of System and Connection to System) does not appear to provide adequate protection against possible discrimination by DNOs in the provision of non-contestable information/services between a affiliated and non affiliated connections providers. In light of this, Ofgem considers that licence condition 4C should be amended to ensure the effective development of competition in the provision of electricity connections and this document outlines possible options for such an amendment.

Rationale

- 1.5. While Ofgem has worked closely with stakeholders over a significant period of time to develop competition and improve DNOs' service delivery within the electricity connection sector, it is important to note that two investigations have now been undertaken under the Competition Act 1998 following complaints about the conduct of DNOs in the provision of non-contestable services to affiliated and non-affiliated connections businesses. One investigation is complete and the other is ongoing. Ofgem believes that the current licence condition concerning non-discrimination in relation to the provision of connections, licence condition 4C (Non-Discrimination in the provision of the

Use of System and Connection to System), does not effectively deal with situations where non-contestable services are provided on a basis that could be considered discriminatory. Consequently, this document outlines Ofgem's proposals for a suitable amendment to licence condition 4C to address these concerns.

Impact Assessment

- 1.6. Ofgem considers that an impact assessment is not required for this document because the proposals outlined within this consultation involve a requirement for record-keeping which should anyway be industry best practice. In Ofgem's view the new obligations are not significant in the terms of Section 5A of the Utilities Act to warrant an Impact Assessment.

Structure of the document

- 1.7. Chapter 2 details possible options to amend licence condition 4C of the electricity distribution licence and invites the views of stakeholders. Chapter 3 proposes the next steps following completion of this consultation exercise.

Responses

- 1.8. Responses should be returned to Ofgem by 15 April 2005 to:

Sean O'Hara

Head of Connections Policy

Office of Gas and Electricity Markets

9 Millbank

London, SW1P 3GE

- 1.9. It is open to respondents to mark all or part of their responses as confidential. Responses that are not marked as confidential will be placed in the Ofgem library and published on the Ofgem website. If you have any queries concerning this document, Sean O'Hara on 020 7901 7037 (e-mail:

sean.o'hara@ofgem.gov.uk) or Laura Nell on 020 7901 7201 (e-mail:
laura.nell@ofgem.gov.uk will be pleased to help.

2. Licence Modification

- 2.1. Ofgem's recent investigation related to complaints about different processes for affiliate and non-affiliate businesses in the provision of POC information by UUE. The provision of POC information is a non-contestable service¹ and is required by an ICP to enable it to provide accurate quotes to customers for proposed connections. Technical data contained within the POC information enables the recipient to determine what equipment/materials are required for the specific job in question, and also highlights whether network reinforcement will be necessary and what the likely costs of connection will be. Both of these considerations are important to enable the recipient to assess the cost of the proposed connection before submitting a quotation to a customer for doing the work.
- 2.2. Ofgem's investigation highlighted that UUE operated a two tier system for the provision of POC information. UUN was in a position to access UUE systems directly to determine POC information, while other connection providers had to request this information from UUE and await a response.
- 2.3. Ofgem has previously consulted as to what would be regarded as a reasonable length of time to provide POC information. Respondents were of the view that it was reasonable to provide POC information within 10-20 working days. Information obtained from UUE illustrated that the majority of requests from connection providers, apart from UUN, for POC information took over 10 working days. The importance of timely POC information is further demonstrated by the fact that the connection providers' customers generally require quotations for connections within 4-5 weeks from request.
- 2.4. While Ofgem's investigation concluded that there was insufficient evidence to establish that UUE had breached the provisions of the Competition Act 1998, Ofgem remains concerned about the potential detriment which may be caused by such differentiated timing in the provision of POC information to connections providers which are not part of the DNO. Ofgem was also concerned about the

¹ Non-contestable services are those parts of the connections process which are not open to competition and can only be undertaken by a DNO. Contestable works are those areas of the connections process that are open to competition.

quality of information held by UUE. Consequently, it is proposed that these issues should be addressed through a licence amendment.

Current Position and Existing Licence Conditions

- 2.5. As part of Ofgem's work to promote competition in connections, DNOs have agreed to implement a number of voluntary standards. One of these standards relates to the time taken to issue a quotation, of which POC information forms a part. Information in respect of these standards of service is provided annually to Ofgem and published within the annual Connections Industry Review (CIR). However, the data supplied does not distinguish between the time taken to provide a quotation to an affiliated and non-affiliated connections business.
- 2.6. In addition to the voluntary standards of service, there are the provisions of the electricity distribution licence. Currently, licence condition 4C of the electricity distribution licence states:

"In the carrying out of works for the purpose of connection to the licensee's distribution system, or in providing for the modification or retention of an existing connection to its distribution system, the licensee shall not discriminate between any persons or class or classes of persons."

Ofgem has considered whether this provision can be used effectively for enforcement purposes in cases involving discrimination in the provision of POC information. Ofgem's view is that the above provision only requires non-discrimination and transparency in relation to requests for actual connections and connection agreements. The provision of POC information precedes these elements.

- 2.7. In addition, when taking into consideration that DNOs have a duty to connect, Ofgem considers that the provision contained within licence condition 4C was originally designed to prevent DNOs from discriminating between domestic and I&C customers, rather than affiliated and non affiliated connection businesses.

Licence Modification

- 2.8. Taking into consideration the limitations of licence condition 4C described at paragraphs 2.7 and 2.8, Ofgem considers that amendment of licence condition

4C is required to facilitate the development of effective competition within the connections industry and enable Ofgem adequately to carry out its regulatory, including enforcement, duties.

- 2.9. Ofgem has developed two possible options for such an amendment and invites views from stakeholders on these proposals.

Option A – Specific Non Discrimination provision

- 2.10. This proposal to amend licence condition 4C relates to a specific requirement upon a DNO not to have in place different arrangements for the provision of POC information for its own connections business, any connections business affiliated to the DNO or any non-affiliated connection business, to ensure a level playing field in the provision of POC information and other non-contestable connections related services. Such a provision could take the following form:

“The licensee shall not discriminate between the licensee’s own connection business, any connections business affiliated to the licensee and non affiliated connection businesses in relation to the provision of non contestable connection services/information.”

- 2.11. While information provided by UUE in relation to POC information requests from ICPs was comprehensive, as UUN did not have to request POC information from UUE, UUE had no records of the date UUN obtained POC information or, in many instances, the date a developer asked for a quotation. This made Ofgem’s investigation much more difficult than should have been the case. Consequently, a licence provision is also required to ensure that DNOs monitor their performance in relation to the non discrimination clause in the provision of non-contestable services. Such a provision could take the form of:

“The licensee shall provide information to the Authority regarding compliance with paragraph X in a format determined by the Authority which may be amended from time to time. Such information shall be provided [annually] or as and when requested by the Authority.”

Option B – General Non Discrimination Provision

2.12. The second possible amendment to licence condition 4C relates to mirroring the provisions currently found within licence condition 4D(1) and 33(5) of the gas transporters licence.²

2.13. The gas transportation licence differs from the electricity distribution licence in that it places a general obligation on the licence holder not to restrict, distort or prevent competition in the connections market. Licence condition 33(5) states:

“In fulfilling its obligation in accordance with this condition the licensee shall not restrict, distort or prevent competition in a market for the provision of connections by any person pursuant to section 10 of the [Gas] Act.”

2.14. Licence condition 4D (1) of the gas transportation licence also states:

“The licensee shall conduct its transportation business in the manner best calculated to secure that neither –

(a) the licensee or any affiliate or related undertaking of the licensee, nor

(b) any gas shipper or gas supplier.

obtains any unfair commercial advantage including, in particular, any such advantage from a preferential or discriminatory arrangement, being, in the case of such an advantage accruing to the licensee, one in connection with a business other than its transportation business.”

2.15. As outlined in paragraph 2.12, a licence provision is also required to ensure that DNOs monitor their performance in relation to the non discrimination provision. Such a provision could take the form of:

“The licensee shall provide information to the Authority regarding compliance with paragraph X in a format determined by the Authority which may be amended from time to time. Such information shall be provided [annually] or as and when requested by the Authority”.

² The proposed wording for this amendment can be found within Appendix 2 Amending Licence Condition 4C of the Electricity Distribution Licence – Consultation document Office of Gas and Electricity Markets

3. Way Forward

- 3.1. Ofgem will produce a summary of responses in order to allow interested parties to view non-confidential responses to the consultation in April 2005.
- 3.2. Upon the completion of this consultation process Ofgem will produce a decision document, in the late spring of 2005, outlining the modification it intends to make to licence condition 4C.

Appendix 1 – Existing Licence Condition 4C

Wording

Condition 4C. Non Discrimination in the Provision of Use of System and Connection to System

1. In the carrying out of works for the purpose of connection to the licensee's distribution system, or in providing for the modification or retention of an existing connection to its distribution system, the licensee shall not discriminate between any persons or class or classes of persons.
2. In the provision of use of system, the licensee shall not discriminate between any persons or class or classes of persons.
3. Without prejudice to paragraphs 1 and 2, and subject to the provisions of standard condition 4C (Charges for Use of System), the licensee shall not make charges for the provision of use of system to any persons or class or classes of persons which differ from the charges for such provision for any other person or to any class or classes of persons, except in so far as such differences reasonably reflect differences in the costs associated with such provision.
4. In settling its charges for connection or use of system, the licensee shall not restrict, distort or prevent competition in the generation, transmission, distribution or supply of electricity.

Appendix 2 – Option A Licence Condition 4C

Wording

Condition 4C. Non Discrimination in the Provision of Use of System and Connection to System

1. In the carrying out of works for the purpose of connection to the licensee's distribution system, or in providing for the modification to or retention of an existing connection to its distribution system, the licensee shall not discriminate between any persons or class or classes of persons.
2. In the provision of use of system the licensee shall not discriminate between any persons or class or classes of persons.
3. The licensee shall not discriminate between the licensee's own connection business, any connections business affiliated to the licensee and non affiliated connection businesses in relation to the provision of non contestable connection services/information.
4. The licensee shall provide information to the Authority regarding compliance with paragraph 3 in a format determined by the Authority which may be amended from time to time. Such information shall be provided [annually] or as and when requested by the Authority.
5. Without prejudice to paragraphs 1 and 2, and subject to the provisions of standard licence condition 4 (Basis of Charges for Use of System and Connection to System), the licensee shall not make charges for the provision of use of system to any person or class or classes of persons which differ from the charges for such provision to any other person or to any class or classes of persons, except in so far as such differences reasonably reflect differences in the costs associated with such provision.
6. The licensee shall not in setting its charges for connection or use of system restrict, distort or prevent competition in the generation, transmission, distribution or supply of electricity.

Appendix 3 – Option B Licence Condition 4C

Wording

Condition 4C. Non Discrimination in the Provision of Use of System and Connection to System

1. In fulfilling its obligation in accordance with this condition the licensee shall not restrict, distort or prevent competition in a market for the provision of connections by any person pursuant to section 16 of the [Electricity] Act.
2. The licensee shall conduct its distribution business in the manner best calculated to secure that neither –
 - (a) the licensee nor any affiliated or related undertaking of the licensee, nor
 - (b) any electricity supplierobtains any unfair commercial advantage including, in particular, any such advantage from a preferential or discriminatory arrangement being, in the case of such an advantage accruing to the licensee, one in connection with a business other than its distribution business.
3. The licensee shall provide information to the Authority regarding compliance with paragraph 2 in a format determined by the Authority which may be amended from time to time. Such information shall be provided [annually] or as and when requested by the Authority.
4. In carrying out works for the purpose of connection to the licensee's distribution system, or in providing for the modification to or retention of an existing connection to its distribution system, the licensee shall not discriminate between any persons or class or classes of persons.
5. In the provision of use of system the licensee shall not discriminate between any persons or class or classes of persons.
6. Without prejudice to paragraphs 4 and 5, and subject to the provisions of standard licence condition 4C (Charges for Use of System), the licensee shall not

make changes for the provision of use of system to any person or class or classes of persons which differ from the charges for such provision to any other person or to any class or classes of persons, except in so far as such differences reasonably reflect differences in the costs associated with such provision.

7. The licensee shall not in setting its charges for connection or use of system restrict, distort or prevent competition in the generation, transmission, distribution or supply of electricity.