

SCHEDULE 8

Modification of standard conditions of licences granted under the Electricity Act 1989

PART 5

Standard conditions of electricity interconnector licences

- 5.—(1) The standard conditions of an electricity interconnector licence are amended as follows.
- (2) In condition 1 (definitions and interpretation)—
- (a) before the definition of the “Act” insert—
- ““Access Rules” means methodologies used to establish terms and conditions for access to (including use of) the licensee’s interconnector but not including those related to charges;”;
- (b) after the definition of the “Act” insert—
- “the “Agency” means the Agency for the Cooperation of Energy Regulators established by Regulation 2009/713/EC of the European Parliament and of the Council of 13 July 2009(1);
- “ancillary service” means a service necessary for the operation of the licensee’s interconnector or an interconnected system;”;
- (c) after the definition of “CUSC” insert—
- “the “Directive” means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC(2);”;
- (d) after the definition of “integrated transmission system” insert—
- ““interconnected system” means a system of a relevant system operator with which the licensee’s interconnector is connected or with which the licensee interfaces;
- “interconnector capacity” means all interconnector capacity, including new interconnector capacity, which is available over the licensee’s interconnector;”;
- (e) after the definition of “licensee’s interconnector” insert—
- ““new interconnector capacity” means physical capacity, or a new capacity product, which is made available over the licensee’s interconnector on or after 3 March 2011;
- the “Regulation” means Regulation 2009/714/EC of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation 2003/1228/EC(3);”;
- (f) after the definition of “regulatory authority” insert—
- ““related undertaking” has the meaning given to it in Article 2 of the Directive;”;
- (g) for the definition of “relevant system operator”, substitute—
- ““relevant system operator” means a transmission system operator or distribution system operator where such phrases shall have the meaning given to them in Article 2 of the Directive;”;
- (h) in paragraph 11, for “A, B, C, D or E” (in each place) substitute “A, B, C, D, E or F”.

(1) OJ No L 211, 14.08.2009, p. 1.

(2) OJ No L 211, 14.08.2009, p. 55.

(3) OJ No L 211, 14.08.2009, p. 15.

- (3) In condition 4 (provision of information to the Authority), in paragraph 1—
- (a) in sub-paragraph (b), at the end, omit “and”;
 - (b) in sub-paragraph (c), for the full stop at the end substitute “; and”;
 - (c) after sub-paragraph (c), insert—
 - “(d) any functions conferred on the Authority by or under the Regulation.”.
- (4) In condition 5 (provision of information to a relevant transmission licensee or relevant distribution licensee)—
- (a) for the heading, substitute “Information regarding technical rules, operation and co-ordinated development”;
 - (b) re-number paragraph 5 as paragraph 6;
 - (c) re-number paragraph 4 as paragraph 5;
 - (d) re-number paragraph 3 as paragraph 4;
 - (e) re-number paragraph 2 as paragraph 3;
 - (f) re-number paragraph 1 as paragraph 2;
 - (g) before paragraph 2, insert—
 - “1. In order to promote effective competition and the efficient functioning of the internal market, if so directed by the Authority the licensee shall:
 - (a) define the technical safety criteria and technical rules establishing the minimum technical design and operational requirements for connection by users to the interconnector. The technical rules shall ensure the interoperability of systems and be objective and non-discriminatory; and
 - (b) publish the technical safety criteria and technical rules described in sub-paragraph (a) above, at least on its website.”;
 - (h) in paragraph 2—
 - (i) for “The licensee shall furnish to any relevant transmission licensee or any relevant distribution licensee” substitute “To the extent not already published pursuant to paragraph 1 above, the licensee shall furnish to any relevant transmission licensee, any relevant distribution licensee or any operator of an interconnected system”;
 - (ii) in sub-paragraph (a), for “for that” substitute “by a” and after “applicable industry codes;” omit “or”;
 - (iii) in sub-paragraph (b) after “in such directions”, for the full stop at the end substitute “; or”;
 - (iv) after sub-paragraph (b), insert—
 - “(c) be required by the operator of an interconnected system for the purposes of ensuring the secure and efficient operation of the interconnected system and its coordinated development and interoperability with the licensee’s interconnector.”;
 - (i) in paragraph 3—
 - (i) for “refuse to provide an item of information” substitute “refuse to disclose an item of information under paragraph 1, sub-paragraph 2(a) and/or sub-paragraph 2(c)”;
 - (ii) for “sub-paragraph 1(a)” substitute “paragraph 1, sub-paragraph 2(a) and/or sub-paragraph 2(c).”;
 - (j) in paragraph 5—
 - (i) for “Sub-paragraph 1(a)” substitute “Sub-paragraphs 2(a) and 2(c)”;

- (ii) after “relevant transmission licensee”, for “or” substitute “,”;
 - (iii) after “relevant distribution licensee” insert “, or any operator of an interconnected system”;
 - (k) in paragraph 6, in the definition of “relevant transmission licensee” after “the licensee interfaces” omit “with”.
- (5) In condition 6 (separation of accounts), in paragraph 1, for “cross-subsidisation” substitute “discrimination, cross-subsidisation and the distortion of competition”.
- (6) In condition 9 (use of revenues)—
- (a) re-number paragraph 3 as paragraph 4;
 - (b) re-number paragraph 2 as paragraph 3;
 - (c) re-number paragraph 1 as paragraph 2;
 - (d) before paragraph 2, insert—

“Part A: Purpose

1. The purpose of this licence condition is to ensure appropriate use of revenues and to secure collection of specific accounting information to an appropriate degree of accuracy by the licensee so as to enable the Authority to review and approve the use of revenue resulting from the allocation of interconnector capacity.

Part B: Use of Revenues”;

- (e) in paragraph 2, for “only for one or more of the purposes listed in sub-paragraphs 2(a) to 2(c) below” substitute “in accordance with Article 16(6) of the Regulation”;
- (f) after paragraph 2, insert—

“Part C: Use of Revenues Statement”;

- (g) in paragraph 3—
 - (i) for “an annual revenue statement (‘use of revenues statement’)” substitute “a use of revenues statement”;
 - (ii) omit the wording from “This use of revenues statement” to the end;
- (h) in paragraph 4, for “to the Authority within 12 months” to the end substitute “no later than 15 July 2011 and thereafter annually by 15 July.”;
- (i) after paragraph 4, insert—

“5. The use of revenues statement must set out, in respect of the year ending on 30 June:

 - (a) the total amount of revenues the licensee has received from the allocation of interconnector capacity during that period;
 - (b) the use made of those revenues during that period;
 - (c) a statement verifying that, in the licensee’s view, the actual use of revenues is in accordance with Article 16(6) of the Regulation, and giving reasons for that view; and
 - (d) any changes in approach or categorisation since the last submitted use of revenues statement.

Part D: Approval of Use of Revenues Statement

6. The use of revenues statement shall not be approved for the purposes of paragraph 1 unless and until the Authority has issued a direction approving the use of revenues statement, such direction to be issued without undue delay and in any event within 3 months of receipt of the use of revenues statement from the licensee, unless, prior to the expiry of that period, the Authority directs that the use of revenues statement is not approved. In the absence of any direction within 3 months of receipt of the use of revenues statement from the licensee, the use of revenues shall be deemed to be approved.”.

(7) In condition 10 (charging methodology to apply to third party access to the licensee’s interconnector)—

- (a) in paragraph 1, omit “either before the licensee enters into the agreement or before the tariffs under the agreement fall due”;
- (b) after paragraph 1, in the sub-heading omit “and review”;
- (c) for paragraph 2, substitute—

“2. The licensee shall, sufficiently in advance of new interconnector capacity becoming operational, or by such date as the Authority may direct in writing, prepare and submit for approval by the Authority, a charging methodology for access to (including use of) the licensee’s interconnector. The licensee may, subject to the approval of the Authority, submit a statement which includes both the Access Rules and the charging methodology.”;

- (d) re-number paragraph 21 as paragraph 25;
- (e) re-number paragraph 20 as paragraph 24;
- (f) re-number paragraph 19 as paragraph 23;
- (g) re-number paragraph 18 as paragraph 22;
- (h) re-number paragraph 17 as paragraph 21;
- (i) re-number paragraph 16 as paragraph 20;
- (j) re-number paragraph 15 as paragraph 19;
- (k) re-number paragraph 14 as paragraph 18;
- (l) re-number paragraph 13 as paragraph 17;
- (m) re-number paragraph 12 as paragraph 16;
- (n) re-number paragraph 11 as paragraph 15;
- (o) omit paragraph 10;
- (p) re-number paragraph 9 as paragraph 12;
- (q) re-number paragraph 8 as paragraph 11;
- (r) omit paragraph 7;
- (s) re-number paragraph 6 as paragraph 10;
- (t) re-number paragraph 5 as paragraph 9;
- (u) re-number paragraph 4 as paragraph 5;
- (v) re-number paragraph 3 as paragraph 4;
- (w) after paragraph 2, insert—

“3. The charging methodology shall set out the methodologies for the calculation of any charges imposed for access to (including use of) the interconnector and/or the

provision of ancillary services, and any payments made for access to (including use of), the interconnector, including:

- (a) charges levied by the licensee for the allocation of interconnector capacity, including but not limited to:
 - (i) any charges for congestion management purposes, such as the non-use of nominated interconnector capacity; and
 - (ii) any charges for the provision (including the provision to any relevant system operator), of ancillary services, including but not limited to balancing services;
- (b) payments made by the licensee for the provision of ancillary services provided by users or relevant system operators; and
- (c) payments made by the licensee to users for the loss of capacity in the event of being unable to make available interconnector capacity.”;
- (x) in paragraph 4—
 - (i) after “transparent”, for “and” substitute “,”;
 - (ii) after “non-discriminatory”, insert “and compliant with the Regulation and any relevant legally binding decision of the European Commission and/or the Agency”;
- (y) in paragraph 5, in sub-paragraph (a) after “that all persons”, insert “, including those in other Member States.”;
- (z) after paragraph 5, insert—

“6. The licensee shall comply with any direction from the Authority to amend its charging methodology for the purposes of meeting the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the charging methodology submitted by the licensee. Where the Authority directs changes to the charging methodology the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its charging methodology to the Authority for approval, and the provisions of paragraph 7 shall apply.

7. The charging methodology shall not be approved for the purposes of paragraph 1 unless and until the Authority has issued a direction approving the methodology on the basis that it meets the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the charging methodology from the licensee, unless, prior to the expiry of that period, the Authority directs that the charging methodology is not approved. In the absence of any direction within three months of receipt of the charging methodology from the licensee, the charging methodology shall be deemed to be approved.

Provisional Charging Methodology

8. If the Authority does not approve the charging methodology submitted by the licensee, or if the licensee does not submit a charging methodology for approval, the licensee shall comply with any provisional charging methodology which the Authority may, after giving reasonable notice to the licensee, fix for an interim period and the licensee shall ensure that any compensatory measures set by the Authority are put in place to compensate the licensee and/or users as the case may be if the approved charging methodology deviates from the provisional charging methodology.”;

- (aa) in each of the following paragraphs, for “8, 9 and 10” substitute “11 to 14”—
 - (i) paragraph 9;
 - (ii) paragraph 10;

(bb) after paragraph 10, omit—

“Resubmission of charging methodology to the Authority for approval”;

(cc) in paragraph 11—

(i) for “paragraph 10” substitute “paragraphs 13 and 14”;

(ii) in sub-paragraph (a), after “that all persons”, insert “, including those in other Member States.”;

(iii) in sub-paragraph (b)(v), for “10” substitute “14”;

(dd) after paragraph 12, insert—

13. The licensee shall comply with any direction from the Authority to amend its proposed modified charging methodology for the purposes of meeting the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified charging methodology submitted by the licensee. Where the Authority directs changes to the proposed modified charging methodology the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its proposed modified charging methodology to the Authority for approval and the provisions of paragraph 14 shall apply.

14. The proposed modified charging methodology shall not be approved for the purposes of paragraph 1 unless and until the Authority has issued a direction approving the proposed modified charging methodology on the basis that it meets the relevant charging methodology objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified charging methodology from the licensee, unless, prior to the expiry of that period, the Authority directs that the proposed modified charging methodology is not approved (in which case paragraph 8 shall apply). In the absence of any direction within three months of receipt of the proposed modified charging methodology from the licensee, the proposed modified charging methodology shall be deemed to be approved.”;

(ee) in paragraph 16, for “8” substitute “11”;

(ff) in each of the following paragraphs, for “13” substitute “17”—

(i) paragraph 18;

(ii) paragraph 19;

(iii) paragraph 20;

(gg) in each of the following paragraphs, for “4 to 11” substitute “5 to 15”—

(i) paragraph 20;

(ii) paragraph 21 (in both places);

(hh) in each of the following paragraphs, for “17(b)” substitute “21(b)”—

(i) paragraph 22;

(ii) paragraph 23;

(iii) paragraph 24;

(ii) in paragraph 21 for “20” substitute “24”.

(8) In condition 11 (requirement to offer terms for access to the licensee’s interconnector)—

(a) omit paragraph 2;

(b) re-number paragraph 3 as paragraph 2;

(c) re-number paragraph 4 as paragraph 3;

- (d) re-number paragraph 5 as paragraph 4;
 - (e) re-number paragraph 6 as paragraph 5;
 - (f) in that paragraph, for “4 or 5” substitute “3 or 4”;
 - (g) re-number paragraph 7 as paragraph 6;
 - (h) re-number paragraph 8 as paragraph 7.
- (9) After condition 11 (requirement to offer terms for access to the licensee’s interconnector), insert—

“Condition 11A. Approval of terms for access to the licensee’s interconnector

Initial approval of access rules

1. The licensee shall, sufficiently in advance of new interconnector capacity becoming operational, or by such date as the Authority may direct in writing, prepare and submit for approval by the Authority a statement setting out the Access Rules. The licensee may, subject to the approval of the Authority, submit a statement which includes both the charging methodology and the Access Rules.

2. In respect of interconnector capacity which was operational prior to 3 March 2011, and which has not been included in Access Rules submitted pursuant to paragraph 1, the licensee shall, by such date as the Authority may direct in writing, prepare and submit for approval by the Authority the Access Rules.

3. The Access Rules shall comply with the Regulation and must include, in particular, but not be limited to:

- (a) arrangements for maximising the available interconnector capacity, including: the methodology for the calculation of interconnector capacity, the netting of capacity of any power flows in the opposite direction over the interconnector, the volume of capacity offered on a firm basis and any additional capacity offered on an interruptible basis to maximise cross-border trade;
- (b) arrangements for users to obtain interconnector capacity at appropriate timescales, including, where relevant, the auction rules and procedures for nominating power flows against the capacity;
- (c) arrangements for the management of congestion, including procedures for the licensee to resell or make available to other users unused interconnector capacity and for users to transfer or resell interconnector capacity;
- (d) arrangements in the event that the licensee curtails, withdraws or is unable to provide available capacity;
- (e) arrangements for any ancillary services, such as balancing arrangements, including where users may offer ancillary services to assist with relevant system operator balancing; and
- (f) any general terms and conditions that a user must accept in order to obtain interconnector capacity.

4. The Access Rules shall be transparent, objective, non-discriminatory and compliant with the Regulation and any relevant legally binding decision of the European Commission and/or Agency (collectively ‘the relevant access rules objectives’).

5. Prior to submitting the Access Rules to the Authority for approval the licensee shall:

- (a) take all reasonable steps to ensure that all persons, including those in other Member States who may have a direct interest in the Access Rules, are consulted and allow

them a period of not less than 28 days within which to make written representations;
and

- (b) furnish to the Authority a report setting out:
 - (i) the terms originally proposed in the Access Rules;
 - (ii) the representations, if any, made by interested persons; and
 - (iii) any change in the terms of the Access Rules intended as a consequence of such representations.

6. The licensee shall comply with any direction from the Authority to amend the Access Rules for the purposes of meeting the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules submitted by the licensee. Where the Authority directs changes to the Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its Access Rules to the Authority for approval and the provisions of paragraph 7 shall apply.

7. The Access Rules shall not be approved unless and until the Authority has issued a direction approving the Access Rules on the basis that they meet the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules from the licensee, unless, prior to the expiry of that period, the Authority directs that the Access Rules are not approved. In the absence of any direction within three months of receipt of the Access Rules from the licensee, the Access Rules shall be deemed to be approved.

Review of the Access Rules by the licensee

8. The licensee shall review its Access Rules at least once in each calendar year and, subject to paragraphs 10 to 13, make such modifications to the Access Rules as may be requisite for the purpose of ensuring that the Access Rules better achieve the relevant access rules objectives.

9. The licensee shall also review its Access Rules where the Authority so requests. Such review must have regard to any suggestions or comments made by the Authority on the licensee's Access Rules. The licensee shall complete any such review and provide the Authority with a report on the review within three months of the Authority's request. The licensee shall then, subject to paragraphs 10 to 13, make such modifications to the Access Rules as may be requisite for the purpose of better achieving the relevant access rules objectives.

Modification of Access Rules

10. Subject to paragraphs 12 and 13, the licensee shall not make a modification to the Access Rules unless the licensee has:

- (a) taken all reasonable steps to ensure that all persons who may have a direct interest in the Access Rules, including those in other Member States, are consulted on the proposed modification and has allowed such persons a period of not less than 28 days within which to make written representations; and
- (b) furnished the Authority with a report setting out:
 - (i) the terms originally proposed for the modification;
 - (ii) the representations, if any, made by interested persons to the licensee;
 - (iii) any change in the terms of the modification intended in consequence of such representations;

- (iv) how the intended modification better achieves the relevant access rules objectives; and
- (v) a timetable for the implementation of the modification and the date with effect from which the modification (if made) is to take effect, such date being not earlier than the date on which the period referred to in paragraph 13 expires.

11. The licensee shall not propose a modification to the Access Rules more than once a year unless the Authority consents otherwise.

12. The licensee shall comply with any direction from the Authority to amend its proposed modified Access Rules for the purposes of meeting the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified Access Rules submitted by the licensee. Where the Authority directs changes to the proposed modified Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its proposed modified Access Rules to the Authority for approval and the provisions of paragraph 13 shall apply.

13. The proposed modified Access Rules shall not be approved unless and until the Authority has issued a direction approving the proposed modified Access Rules on the basis that they meet the relevant access rules objectives, such direction to be issued without undue delay and in any event within three months of receipt of the proposed modified Access Rules from the licensee unless, prior to the expiry of that period, the Authority directs that the proposed modified Access Rules are not approved. In the absence of any direction within three months of receipt of the proposed modified Access Rules from the licensee, the proposed modified Access Rules shall be deemed to be approved.

Publication of Access Rules

14. The licensee shall publish (at least on its website) the Access Rules as soon as practicable after the Access Rules have been approved by the Authority, or, where the Access Rules have been modified, the Access Rules as modified. Unless the Authority directs otherwise, the Access Rules shall be published 28 days prior to coming into effect.

Provision of Access Rules to any person

15. The licensee shall send a copy of its Access Rules and/or any proposed modification to the Access Rules proposed under paragraph 10, to any person who requests such Access Rules or proposed modification. The licensee may impose a reasonable charge upon a person who requests the sending of the Access Rules or any proposed modification. Such charge should be equivalent to the licensee's reasonable costs of meeting the request but shall not exceed the maximum amount specified in any directions that may be issued by the Authority for the purposes of this condition.”.

(10) In condition 12 (application of licence conditions 9, 10 and 11: exemption orders)—

(a) in paragraph 2—

- (i) after “paragraph 3, the Authority”, for “may” substitute “must”;
- (ii) after “is satisfied that” insert “it has complied with”;
- (iii) after “the requirements”, for “of paragraph 6 are met” substitute “placed on the Authority by Article 17 of the Regulation and the issuing of the exemption order is otherwise compliant with that Article”;

(b) in paragraph 3—

- (i) after “set out in paragraph”, for “6” substitute “1 of Article 17 of the Regulation.”;

- (ii) at the end, insert “The request shall include the Access Rules for approval by the Authority in accordance with paragraph 9 below, which Access Rules shall comply with paragraphs 3 and 4 of licence condition 11A, and prior to submitting the Access Rules for approval, the licensee shall comply with paragraph 5 of licence condition 11A.”;
 - (c) in paragraph 4—
 - (i) in sub-paragraph (a), omit “for an indefinite period or”;
 - (ii) in sub-paragraph (b), omit “unconditionally or” and after “considers appropriate” insert “including any conditions regarding non-discriminatory access to the interconnector to which the exemption relates”;
 - (d) in paragraph 5, after “with its provisions” insert “, and must be revoked if the approval of the European Commission to the exemption expires in accordance with paragraph 8 of Article 17 of the Regulation”;
 - (e) omit paragraph 6;
 - (f) re-number paragraph 7 as paragraph 6;
 - (g) re-number paragraph 8 as paragraph 11;
 - (h) after paragraph 6, insert—

“7. An exemption order will not be made until the Authority has approved the Access Rules.

8. The licensee shall comply with any direction from the Authority to amend the Access Rules submitted pursuant to paragraph 3 above, for the purposes of meeting the relevant access rules objectives and the requirements of paragraph 10 below, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules submitted by the licensee. Where the Authority directs changes to the Access Rules, the licensee shall re-submit (by such date as may be determined by the Authority and notified to the licensee) its Access Rules to the Authority for approval and the provisions of paragraph 9 shall apply.

9. The Access Rules shall not be approved for the purposes of paragraph 7 unless and until the Authority has issued a direction approving the Access Rules on the basis that they meet the relevant access rules objectives and the requirements of paragraph 10 below, such direction to be issued without undue delay and in any event within three months of receipt of the Access Rules from the licensee unless, prior to the expiry of that period, the Authority directs that the Access Rules are not approved. In the absence of any direction within three months of receipt of the Access Rules from the licensee, the Access Rules shall be deemed to be approved.

10. The requirements of this paragraph are that the Authority considers that the Access Rules:

 - (a) will require that any unused capacity in the exempt infrastructure is made available to other users or potential users;
 - (b) will not restrict reselling of rights to have electricity transmitted through the exempt infrastructure.”;
 - (i) in paragraph 11, for “3 August” substitute “4 August”.
- (11) In condition 13 (capacity utilisation)—
- (a) in the heading, for “Capacity utilisation” substitute “Not Used”;
 - (b) omit paragraphs 1 to 9.

(12) In condition 14 (dispute resolution), in paragraph 1, for “non price terms and conditions of access” substitute “Access Rules”.

(13) After condition 18 (offers for connection to or use of the GB transmission system in the transition period), insert—

“PART II

SECTION F: OTHER PROVISIONS

Condition 19. Operation and development of the interconnector

1. The licensee shall at all times act in a manner calculated to secure that it has available to it such resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents and facilities, on such terms and with all such rights, as shall ensure that it is at all times able:

- (a) to properly and efficiently participate in the operation of the interconnector; and
- (b) to comply in all respects with its obligations under this licence, the Act, the Regulation and any other legislation as the Authority may direct from time to time for the purposes of this licence condition.

2. The licensee shall operate, maintain and develop an economic, efficient, secure and reliable interconnector.

3. The licensee shall ensure adequate interconnector capacity and interconnector reliability to ensure the long-term ability of the interconnector to meet reasonable demands for capacity and contribute to security of supply.

4. The licensee shall manage electricity flows on the licensee’s interconnector, taking into account exchanges with any interconnected system and shall ensure the availability of all ancillary services including those provided by demand response, insofar as such availability is independent from an interconnected system.

Condition 20. Prohibition of discrimination and cross-subsidies

1. The licensee shall not discriminate between users or classes of users particularly in favour of a related undertaking of the licensee.

2. The licensee shall not give any cross-subsidy to, or receive any cross-subsidy from, any entity which is a related undertaking of the licensee and which carries out one or more of the following electricity activities: supply and distribution.

Condition 21. General provisions on disclosure of information

1. Save to the extent otherwise provided in this or any other licence condition, or required by any other legal duty to disclose, the licensee shall not disclose commercially sensitive information which it has obtained in the course of carrying out its activities.

2. The licensee shall not disclose information about its own activities, which may be commercially advantageous in respect of supply or generation activities, in a discriminatory manner save where this is necessary for carrying out a business transaction.

3. Paragraph 1 above shall not prohibit disclosure by the licensee to any related undertaking which either holds a transmission licence or is the relevant system operator (being a transmission system operator) for an interconnected system.

4. Without limiting the generality of paragraphs 1 to 3 of this licence condition, the licensee shall not, in the context of sales or purchases of electricity by related undertakings, misuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the licensee's interconnector.

Condition 22. Notification of changes that may affect eligibility for certification

1. Where the licensee has made or makes an application for certification under section 10B of the Act, if at any time prior to the Authority notifying the licensee of its final certification decision under section 10D(7) of the Act the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.

2. Where the licensee has been certified, if at any time the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.

3. If at any time from 3 March 2013 the licensee knows or reasonably should know that any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee is or may become a person from a third country, or that a person from a third country has or may take control of the licensee, the licensee shall as soon as reasonably practicable notify the Authority in writing.

4. If at any time from the relevant date the licensee exercises or is likely to exercise any shareholder right or right of appointment in the circumstances described in section 10M of the Act, the licensee shall as soon as is reasonably practicable notify the Authority in writing of the right that has been or is likely to be exercised and the effect of exercising that right.

5. Where the licensee has been certified, by 31 July of each year following certification the licensee shall provide the Authority with a written declaration, approved by a resolution of the board of directors of the licensee and signed by a director of the licensee pursuant to that resolution, setting out:

- (a) whether any event or circumstance has occurred in the previous 12 month period, or such part of that 12 month period since the licensee was certified, that may affect the licensee's eligibility for certification, and if so, the reasons it considers that the event or circumstance may affect its eligibility for certification;
- (b) whether any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee has become a person from a third country, or that a person from a third country has taken control of the licensee, in the previous 12 month period or such part of that 12 month period since the licensee was certified, providing that the licensee is only required to provide a written declaration under this paragraph (b) in relation to a period that occurs after 3 March 2013; and
- (c) whether the licensee has exercised any shareholder right or right of appointment in the circumstances described in section 10M of the Act in the previous 12 month period or such part of that 12 month period since the licensee was certified and if so the effect of exercising that right, providing that the licensee is only required to provide a written declaration under this paragraph (c) where it has been certified on the certification ground in section 10E(3) of the Act and in relation to a period that occurs after the relevant date.

6. In this condition:

“certified” has the same meaning as in section 10O of the Act

“control” has the same meaning as in section 10O of the Act

“person from a third country” has the same meaning as in section 10O of the Act

“relevant date” has the same meaning as in section 10M of the Act

“shareholder right” has the same meaning as in section 10O of the Act.

Condition 23. Regional Cooperation

1. If the licensee is a vertically integrated undertaking it may participate in a joint undertaking established for the purposes of facilitating regional co-operation pursuant to Article 6 of the Directive and Article 12 of the Regulation.

2. A compliance officer of the licensee shall monitor compliance with a compliance programme which must be established and implemented by the joint undertaking to ensure that discrimination and anti-competitive conduct is excluded.

3. In this condition:

“vertically integrated undertaking” shall have the meaning given in Article 2 of the Directive.”.