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**An appeal under section 173 Energy Act 2004**

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**E.ON UK LIMITED**

**– and –**

**GEMA**

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**Decision of the Competition Commission on  
Permission to Appeal**

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1. On 5 April 2007 the Gas and Electricity Markets Authority (“GEMA”) published its decision “*Uniform Network Code (UNC): Reform of the NTS offtake arrangements (UNC 0116V, 0116BV, 0116CVV, 0116VD and 0116A)*” (“the Decision”). The Decision concerned four proposed modifications to the Uniform Network Code (UNC). Of those four proposals, proposal 0116V was made by National Grid Gas (NGG) and proposal 0116A was made by E.ON UK Limited (“EON”).
2. In the Decision, GEMA directed that proposal 0116V be made and implemented by 1 April 2008. GEMA thereby decided that proposal 0116A (and proposals 0116BV, 0116CVV, 0116VD) should not be implemented.
3. On 30 April 2007, the Competition Commission (the CC) received an application from EON for permission to appeal against the Decision. In particular, EON appealed against the decisions:
  - (a) that proposal 0116V be implemented; and
  - (b) that proposal 0116A should not be implemented.EON’s application included (amongst other documents) a Statement of Case, witness evidence and expert evidence.
4. On 8 May 2007 GEMA acknowledged receipt of EON’s application for permission. GEMA indicated that it would oppose the appeal if permission were granted, but did not object to the granting of permission. The CC has not received any representations opposing EON’s application for permission to appeal.

5. Under sections 173(1) and (2) of the Energy Act 2004 (“the Act”), an appeal lies to the CC in respect of certain decisions. The Decision falls within the scope of section 173(2). In particular, the CC notes that:
  - (a) the UNC is a designated document for the purposes of section 173(2)(b): see the Electricity and Gas Appeals (Designation and Exclusion Order) 2005 (“the Order”) article 3(f).
  - (b) the Decision does not consent to a majority recommendation of the UNC Modification Panel, and so does not fall within Article 10 of the Order.
6. Under section 173(3)(a) of the Act, an appeal against a decision may be brought by a person whose interests are materially affected by it. The CC is satisfied that EON falls within section 173(3)(a) and so has standing to appeal the Decision.
7. Under paragraph 1(3) of Schedule 22 to the Act, an appeal under section 173 must not be made after the end of fifteen working days following the earliest day on which the decision was published. EON’s appeal was made within the relevant time limits.
8. Under section 173(4) of the Act, the permission of the CC is required for the bringing of an appeal under section 173. Under section 173(5), the CC may refuse permission only on one of the following grounds:
  - (a) The appeal is brought for reasons that are trivial or vexatious.
  - (b) The appeal has no reasonable prospect of success.
9. The CC considers that neither of these grounds applies. The CC therefore grants EON permission to appeal on the basis of the grounds set out in its Statement of Case.
10. However, the CC notes that EON’s Statement of Case does not clearly set out how each of EON’s various criticisms of the Decision corresponds to the grounds of appeal stated in section 175(4) of the Act. EON is therefore directed to provide to the CC by 5 pm on Thursday 17 May 2007 a document which identifies in point form EON’s grounds of appeal by reference to the relevant ground under section 175(4). The document should take the form set out in the Annex to this decision, and must not include any grounds which are not included in EON’s Statement of Case of 30 April 2007. Although the CC would not wish to limit the grounds of appeal on which EON may wish to rely, it would assist the CC if the document were no more than 4 pages long (or were as close to 4 pages as possible). A copy of the document shall be served on GEMA at the same time.
11. Further, in order to assist the CC’s understanding of the appeal, the CC directs EON to provide to the CC by 5 pm on Friday 18 May 2007 a document in table form which sets out in (at least) three columns a summary of the recent and proposed changes to arrangements for the offtake of gas from the NTS. In particular, the table should explain:
  - (a) the relevant arrangements before the current transitional arrangements were introduced,
  - (b) the current transitional arrangements and
  - (c) the arrangements as they would be were proposal 0116V to be implemented.

A copy of the document should be served on GEMA at the same time.

12. The CC directs that a case management conference should be held on 31 May 2007.

**Dame Barbara Mills QC**

**Group Chair**

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**E.ON UK LIMITED**

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**Annex to Decision of the Competition Commission on  
Permission to Appeal**

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1. The document to be provided to the CC in accordance with paragraph 10 of the CC's decision on permission to appeal should set out in point form EON's grounds of appeal by reference to the relevant ground under section 175(4). Each point should take the following form:
  - "GEMA failed properly to have regard to [ ] because [ ]"; or
  - "GEMA failed properly to have regard to the purposes for which the relevant condition has effect because [ ]"; or
  - "GEMA failed to give the appropriate weight to [ ] because [ ]"; or
  - "GEMA's decision was based wholly or partly on an error of fact because [ ]";  
or
  - "The Decision was wrong in law because [ ]".