

# **GOVERNMENT RESPONSE TO THE CONSULTATION ON PROPOSED MODIFICATIONS TO LICENCE CONDITIONS**

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## **I INTRODUCTION**

1. On 29 March this year the Government published a consultation on proposals to make two modifications to the licences of generators (and inviting views on the option of extending coverage of the system balancing condition to suppliers). Responses were received from representatives of thirty organisations including generators, suppliers, system operators, and industrial and domestic consumers. A wide range of views were expressed with some organisations strongly supporting the proposals and others strongly opposing the proposals. A summary of responses is produced in section II and copies of responses are available for viewing in the DTI library. Ofgem also published draft guidance to the proposals simultaneously with the consultation and have consulted separately on their draft guidance.

2. In general, there were three types of response. Some were supportive of the proposals. Those in the second group accepted the case for some but not all of the proposals, or identified alternative concerns. Those in the third group were opposed in principle to the proposals or did not consider a sufficient case had been made for the proposed modifications. Some also thought that the case had not been made for use of the Secretary of State's power under section 15A of the Electricity Act 1989 as amended by the Utilities Act 2000 (the 'NETA power').

3. Many respondents suggested changes and improvements to the proposed licence conditions and greater clarity about the relationship between the proposals, the Competition Act 1998 (the 'Competition Act') and New Electricity Trading Arrangement ('NETA') market rules.

4. Following careful consideration of the information and arguments brought forward in the course of the consultation exercise, the Government considers that it is right to consult further on the basis of revised licence conditions which seek to address concerns raised by respondents. In this response document, we address questions raised during the first consultation (in section III) and explain changes that have been made to the proposals in the light of the consultation. Section IV sets out revised proposals on which further comments are invited. Details of how to respond to this second consultation are at section V.

5. In the light of responses to its consultation on draft guidance to the proposals, revised guidance is being published by Ofgem in parallel with this document.

## **II SUMMARY OF RESPONSES**

6. In its document of 29 March the Government supported in principle Ofgem's request for additional powers to enable it to deal with detrimental market behaviour during the early months of NETA.

### **Arguments for**

7. Those in favour of the proposals argued that they were well founded and necessary to prevent detrimental behaviour during the early months of the new market. A number considered that the conditions should in fact remain in place beyond the year originally proposed.

8. Some respondents considered that prices observed in the Balancing Mechanism ('BM') since the start of NETA illustrated the need for the conditions, with some suggesting that actions that would be caught by the conditions have already been observed in the market, and that these actions have contributed to the high level of prices in the BM. It was argued that companies' fears of paying high imbalance prices was driving risk-averse behaviour by participants that further limited BM liquidity and increased BM price volatility.

9. Some argued that the proposals addressed issues raised by a Competition Commission (the 'Commission') report (AES and British Energy: A report by the Competition Commission on references made under section 12 of the Electricity Act 1989) (the 'Report') conducted during 2000. Some also thought that the individual licence conditions were better focused on the specific types of behaviour that were of concern.

### **Arguments against**

10. A number of respondents sought clarification of the purpose and need for such conditions, especially in the light of the Report.

11. Those opposed to the proposals suggested that they would prove unnecessary and even harmful to the developing market. They pointed to competition in the wholesale market and the benefits of NETA and argued that additional regulation was not needed at this time.

12. A number argued that the Commission's findings and conclusions in the Report provided a clear case against the current proposals. Many of those opposed also suggested that the licence conditions were either identical in effect to the Market Abuse Licence Condition or alternatively more damaging because they were vaguer or unnecessarily widely drawn.

13. Some also argued that Ofgem had adequate alternative powers to deal with any instances of significant market abuse.

14. Some of the respondents that queried the need for the proposed conditions also questioned the proposed use by the Secretary of State of the NETA power. Concerns were expressed by some generators that proposals such as these, pursued in this way, raised the perceived regulatory risk associated with the sector, to the detriment of all players in the market. In addition, it was argued that the Secretary of State would effectively be overturning the Commission's findings.

15. Some concerns were aired about the way in which Ofgem might apply any new licence conditions, with some fearing that Ofgem would seek to intervene in companies' commercial decisions to a greater extent than was necessary to fulfil its role, in effect introducing price regulation.

16. Several respondents were concerned about the perceived lack of an appeals process.

### **More guidance**

17. Most respondents called for more comprehensive guidance, and concerns were expressed by some that the proposed combination of licence conditions and guidance did not enable companies to distinguish between acceptable and unacceptable behaviour. A number of respondents pointed out that they recognised that the guidance was for illustrative purposes but considered that more comprehensive guidance would reduce uncertainty.

### **Delayed implementation**

18. A few respondents suggested some form of delayed implementation or review period before switching on conditions.

### **Drafting of the licence conditions**

19. Almost all respondents made some observations on the drafting of the two licence conditions, generally intended to reduce uncertainty and seek further clarification. Suggestions included: (a) introducing a materiality test to both conditions; (b) making the measure of consumer detriment more explicit in the capacity limiting condition; (c) substituting 'reasonable cause' or 'due cause' for 'good cause' in the capacity limiting condition, introducing the limitation 'without reasonable cause' in the system balancing condition; (d) introducing a requirement in the capacity limiting condition that the detrimental behaviour needs to be undertaken with intent; (e) clarifying or removing the term 'economic' from the system balancing

condition; and (f) clarifying the extent to which the capacity limiting condition is aimed at short term behaviour.

### **III GOVERNMENT RESPONSE**

#### **Need for the licence modifications**

##### Summary

20. The Government remains concerned that there is a significant risk that detrimental behaviour in the early months of NETA could occur which could lead to harmful consequences to competition and consumers. In particular, smaller generators and suppliers may be affected. Market participants have raised concerns with Ofgem about the conduct of several participants in the market as to whether the observed behaviour constituted market abuse. Ofgem continues to consider that some of the behaviour that has been identified by market participants cannot be addressed through the use of its existing powers including the Competition Act 1998 and agreeing changes to market rules. The Government believes that there may be a need for introducing the proposed licence conditions, in order to prevent detrimental behaviour taking place in the early months of NETA, while the market is bedding down. Nevertheless, the Government accepts that the conditions proposed in its first consultation should be narrowed in scope, and the revised proposed licence conditions reflect this. In light of this, we are consulting again on the revised proposals.

21. The Government considers that the Commission recognised it could not properly assess the situation under NETA without any experience of NETA in operation. By contrast, the Government now has access to data and observations of the first few months of NETA's operation. Therefore the findings of the Commission cannot in themselves constitute an argument against the proposed licence conditions.

22. The Government anticipates that, in the new market, there will be increased competition (partly as a result of demand-side participation), more responsive governance, and fewer opportunities for detrimental behaviour in the market. However, it will take time for the new market to establish itself fully.

23. Moreover, with NETA in operation for over four months, the Government notes that, although overall market functioning appears to be improving, certain behaviour has already been observed which is problematic for the new market. The Government recognises that certain types of distortive behaviour under NETA could be addressed either through the use of Ofgem's powers under the Competition Act 1998, or through modifications to the Balancing and Settlement Code ('BSC') or the Grid Code. However, these routes may not always be appropriate or sufficient to deal with such behaviour, at least during the early months of NETA.

24. Therefore the Government wishes to ensure that Ofgem is able to address effectively detrimental behaviour under NETA until the market has bedded down.

#### The Competition Commission Report

25. The fact that the Commission found that rejecting the Market Abuse Licence Condition would not operate against the public interest is not in itself an argument against the introduction of the proposed licence conditions. Firstly, the Commission reached its conclusions under different circumstances (before the introduction of NETA, and looking at the issue of whether the licences for two particular companies, in their unmodified form, could be expected to operate against the public interest). Secondly, and in any event, the current proposals differ markedly from the Market Abuse Licence Condition.

26. We recognise that two of the three examples of offending behaviour given by Ofgem's guidance under MALC now constitute the proposed licence conditions. However, by making these examples conditions, and by excluding one example of behaviour, we have defined more clearly the types of behaviour we consider need to be controlled, and significantly narrowed the potential scope of offending behaviour. The proposed conditions, in contrast to MALC, are now focused expressly on two types of behaviour which would upset the establishment of a competitive market under NETA. Moreover, the scope of each condition is more limited than the examples under MALC: the system balancing condition requires that behaviour be

*knowing or reckless and without reasonable cause* in order to be caught, and the capacity limiting condition requires *intent*.

27. In its investigation into British Energy and AES last year, whilst finding against the Market Abuse Licence Condition then proposed by Ofgem, the Commission made a number of observations relating to the opportunities for and effects of the use of market power and the manipulation of rules. The Report summarised the arguments as follows:

‘..There are several features of NETA which suggest that both the opportunities for and the effects of the exercise of market power by generators are likely to be substantially less than they have been under the Pool...

That said, we find that the uncertainties over how NETA will work in practice are such that we cannot form a clear expectation as to the incidence of market power problems in the new circumstances.....’

(paragraphs 1.6 – 1.7)

28. In relation to manipulation of rules, the Commission said:

‘NETA has been designed in such a way as to minimise the opportunities for manipulation of the market. Given the complexity of the arrangements needed, it is possible that some problems of this kind will nevertheless arise, but the governance arrangements for NETA should enable necessary rule modifications to be made without undue delay.

Beyond that, the DGES may be right to predict that manipulation will be a continuing problem because no workable set of rules could eliminate the possibility. But in view of the uncertainties we cannot form an expectation that manipulation by AES or British Energy will occur, with adverse effects for the public interest.’

(paragraphs 1.17 – 1.18)

29. We fully support the Commission’s analysis of the beneficial features of NETA referred to above and for this reason are not proposing licence modifications to stand in perpetuity. As explained above, the issue at this point is the transition from the Pool market to the NETA market, a transition of which we now have direct experience. Moreover, we are now considering distinctly different proposals from the Market Abuse Licence Condition. Finally, the Commission recognised that it might prove necessary for the Secretary of State to use the NETA power for the purposes set out here (italics added):

‘Competition should be given the opportunity to work in the *new circumstances of NETA*, and with a less concentrated generation sector, without the introduction at this stage of new *broadly-framed* regulation.’  
(1.12)

‘If, in the light of experience, such manipulation proves to be a significant problem under NETA and cannot be satisfactorily dealt with by rule modification, *it will be open to the Secretary of State to consider using his powers under the Utilities Act to introduce new licence conditions to address the problem.*’ (1.18)

#### Experience of NETA to date

30. NETA has now been in operation for over four months. The transition from the Pool to NETA was only achieved through the hard work and resourcefulness of participants, their contractors and the central team. Since 27 March (‘Go Live’), central systems and participants are beginning to test the market, as was anticipated before Go Live. We have not yet experienced a period of significant transmission system stress under NETA.

31. The Government and Ofgem continue to consider that NETA, in conjunction with other reforms like plant divestments, is beginning to deliver significant benefits notably in the development of a competitive wholesale market (applying downward pressure on prices) and a flexible governance framework. Moving from the Pool to NETA central systems was achieved overnight but it is widely recognised that it will

take considerably longer for the new market to establish itself fully. When the new trading arrangements have bedded down, NETA will complete reforms set out in the 1998 White Paper, 'Conclusions on the Review of Energy Sources for Power Generation – Government Response to fourth and fifth Reports of the Trade and Industry Committee' which together have significantly increased competition in the electricity market.

32. National Grid Company ('NGC') as the System Operator ('SO'), like other market participants, is climbing a steep learning curve in the new trading arrangements. The SO has available a number of routes through which to maintain the integrity of the transmission system including the ability to contract in the forwards market. However, there is inevitably an extent to which it initially will have to respond to behaviour by market participants, particularly in the BM.

33. Ofgem and DTI consider that the development of the demand side is crucial to the development of competition in NETA. Currently there are only limited signs of demand-side participation in the BM. Over time we expect this to increase as a price history is established, as industrial consumers respond to BM price signals, as they and suppliers develop expertise in forecasting and controlling demand and, over time, as technological change increases scope for domestic consumer participation.

34. There are therefore a number of ways in which the market can be expected to develop over the coming year such as to mitigate the need for the proposed licence conditions, although NETA has not yet been tested in a period of significant transmission system stress such as a prolonged period of transmission maintenance or cold weather. In the meantime the licence conditions would fulfil a clear need to deter detrimental behaviour in the market, and provide adequate powers for Ofgem to deal with any such behaviour that does arise.

#### The need for control of detrimental behaviour under NETA as a transitional measure

35. We said in the first consultation, and we have explained above, that the Government wished to ensure that Ofgem had the necessary powers effectively to deter and deal with significant cases of detrimental behaviour during the bedding

down period of NETA. The Government is concerned that in the absence of these powers the establishment of the new market will be hampered.

36. Serious cases of detrimental behaviour could cause artificially extreme prices in the BM. Such behaviour may, in certain circumstances, lead to significant artificial imbalance costs for participants individually and create distortions in competition and consequently detrimental effects for consumers.

37. If Ofgem is not able effectively to deal with such behaviour, confidence in the new market's integrity will be undermined, leading to behavioural responses by participants which further hamper growth in liquidity and transparency. Importantly, extreme BM prices could, in certain circumstances, put individual participants out of business, particularly those who are highly exposed to imbalance prices.

#### Existing ways of addressing detrimental behaviour

38. There are existing ways to try and deal with problematic or detrimental behaviour, including the Competition Act, and the system for BSC/ Grid Code modifications. However, the Government considers that these existing mechanisms may not, in the initial stages of NETA, always be appropriate for or effective in catching such behaviour.

39. In some cases, where there is clear evidence of abuse of a dominant position in a defined market, Ofgem could use the Competition Act. Whenever investigating market related issues, Ofgem considers using its powers under the Competition Act and wherever appropriate, the Gas and Electricity Markets Authority (the 'Authority') will use its enforcement powers under this Act. In other cases, application of the Competition Act may be less clear cut or simply not possible, a view which has been supported by leading Counsel to Ofgem<sup>1</sup>. In particular they point out that there may be doubts as to the definition of a market where the market is considered temporally transitory; and that it may be difficult to demonstrate dominance in relation to undertakings with low market shares. At this stage in the development of the market

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<sup>1</sup> A copy of Counsel's opinion is available on Ofgem's website at [www.ofgem.gov.uk](http://www.ofgem.gov.uk) under the 'Competition Commission' section.

and of case law we recognise that there may be some concerns in this respect. However, over time, we anticipate that the development of case law should make the application of the Competition Act clearer, and we expect that Ofgem will play a full part in this process. There remains a possibility that the same action could be caught under either the Competition Act or the proposed licence conditions – the law requires Ofgem to use the Competition Act route if that is most appropriate.

40. In certain of these cases an option would be to effect changes to the market rules, either the BSC or Grid Code. During the early days of NETA there will inevitably need to be a number of changes to the market rules. Already there have been a number of changes to the BSC and additional modifications have been proposed. It is apparent that some of the amendments proposed, if agreed, will take significant time to implement due to changes needed to the central IT systems.

41. NETA was designed with governance arrangements that are substantially more flexible than those of the Pool. In addition to providing market participants, energywatch and the BSC Panel with the ability to propose modifications to the BSC, the Authority has been given special powers for the first year following the implementation of NETA (i.e. until 26 March 2002) in cases where the Authority considers there is substantial disruption to the implementation and/ or operation of NETA and that urgent action is necessary. In such cases the Authority can request the BSC Panel to consider what modification to the BSC would prevent such substantial disruption.

42. However there will be cases, due to the inherent complexities of the rules, where it is not possible to write a rule to prevent detrimental behaviour without seriously hampering normal commercial behaviour, or where, although a rule change can be agreed swiftly, it will take a number of months to design and implement the necessary changes to central systems. In the former case, the Government considers it preferable to have in place longstop licence conditions (with protections as discussed below) rather than for Ofgem to have to seek any number of extreme market rule restrictions on all participants in the market, regardless of the effects of their behaviour. In the latter case, it will still be necessary and appropriate that market rules changes are made, but the licence conditions would provide necessary protection to

the market, other participants in the market and consumers during the interim period. In some cases it may be simply impossible to formulate a practical rule.

#### Evidence of detrimental behaviour

43. A number of market participants have already observed behaviour which might suggest that there are opportunities to exercise detrimental influence on the market under NETA. For example, observed behaviour which might potentially be investigated includes where the Final Physical Notification (FPN) submitted by a Balancing Mechanism Unit (BMU) at gate closure indicates an unusual profile of intended output, within or between half hours, that appears inconsistent with normal operational or commercial practice. We share concerns that such behaviour and its effects could become more acute during a period of greater system stress.

#### **Use of Secretary of State's power under NETA**

44. Some respondents questioned the appropriateness of using the NETA power to make the proposed modifications. The Government considers that it is appropriate to use the NETA power to make these modifications which – for the reasons set out in detail above – are needed and of considerable practical help in establishing the new market and in allowing a price history to develop. Before Go Live, Ofgem identified certain anticipated behaviours by participants as likely to be problematic and indeed some of these have been borne out. We are not however proposing to introduce ongoing conditions through use of this power. Instead they are focused on a transitional period and would be in effect for twelve months from the date of insertion, after which they would be subject to a disapplication procedure.

45. Concerns were expressed that use of the NETA power will raise the level of regulatory risk associated with the sector. It is important to note that there are a number of special circumstances that justify use of the NETA power on this occasion, as the Commission itself suggested in its Report (see paragraph 29 above). First, there is an identified risk (in two specific areas) to the market (either collectively or individually) from detrimental behaviour. Second, this risk is of particular concern during a short and specific period (both because of the sensitivity of the new market

during this period and because alternative means of dealing with such behaviour may not provide adequate protection on their own). Third, the conditions are now closely specified so as to be sure of catching only those cases of real concern and to minimise their impact on normal commercial behaviour.

### **Use of licence conditions by Ofgem**

46. The revised proposed licence conditions are even more closely specified to limit their application to cases where it is truly necessary. Ofgem's expanded guidance clarifies how Ofgem would make use of the conditions. Furthermore, as set out above, the conditions would be applied in the context of the Competition Act and the market rule framework.

### **Appeal mechanism**

47. Many respondents raised concerns about the lack of a full appeals mechanism for the proposed licence conditions. It would appear from responses to the consultation that there is no clear view on how a special appeals mechanism might be constituted and we are mindful of the identical arrangements that are in place in relation to licence conditions generally. Companies subject to a determination under the proposed licence conditions would have some protection, in particular the fact that a decision to fine under licence conditions would be exercised only by the Authority (rather than one individual).

48. The revised guidance sets out the process which Ofgem would follow – in common with the process adopted for enforcing other licence conditions – in exercising its powers. We note that it remains open to companies to seek judicial review of the Authority's determinations.

### **Application of proposals to all generators**

49. A couple of respondents questioned the need for the proposals to cover all generators rather than the eight who were the subject of the Market Abuse Licence Condition last year. We propose to include all licensed generators within the

modifications because under NETA it is possible for companies with low market share knowingly to cause detriment to the market in certain circumstances. We accept that there is however a lower likelihood that a small generator would be able to do this to significant effect and note that the revised proposals provide a number of additional protections to ensure that they catch only behaviour that would be a significant detriment to the market.

### **Drafting of Licence Conditions**

50. Many respondents to the consultation suggested changes to the proposed licence conditions as described in section II. We consider each in turn.

51. We accept that it would be reasonable and in keeping with the objective of the conditions to introduce a test of ‘materiality’ into both licence conditions as they are intended to apply to instances of detrimental behaviour that have a material effect on wholesale prices. Furthermore it would seem appropriate that the burden of proof should lie with Ofgem to demonstrate that the behaviour has had material effects in the market. The revised licence conditions in section IV reflect this change.

52. A case was made for making the measure of consumer detriment more explicit in the capacity limiting condition and in particular to replace the formulation ‘prejudice the interests of consumers’ with ‘increase the level of wholesale prices’ or ‘impede the operation of NETA’. However, we note that behaviour could briefly disrupt prices in the BM but without, in fact, affecting either participants or consumers – in such a case the action would not need to be caught. On the other hand, there may be effects on consumers, other than the direct effect of higher wholesale prices (e.g. undermined system security) which we would want Ofgem to be able to take into account in applying the conditions. We believe that it is therefore preferable to retain the current drafting.

53. It was suggested that the system balancing condition should include a formulation that limited its application to actions that are taken ‘without reasonable cause’ and that ‘reasonable’ or ‘due’ be substituted for ‘good’ in the capacity limiting condition to avoid the more subjective or judgmental connotations of the word ‘good’.

We accept that this change should provide reassurance to companies that find themselves having to take ostensibly disruptive actions for legitimate reasons.

54. We also accept the arguments made in support of a test of ‘intent’ for the capacity limiting condition, to distinguish cases in which capacity is limited inadvertently. This change should afford greater protection to participants.

55. A number of comments were made about the inclusion of the term ‘economic’ in the system balancing condition, both pointing to this divergence from the model adopted in gas and questioning its meaning in the condition. In anticipation of potential changes to gas shippers’ licence conditions, the word ‘economic’ was added at Ofgem’s request. On balance, we consider it appropriate that the condition is modelled on the condition in gas shippers’ licences, which we propose should include the term ‘economic’, in the form that will be determined by the Secretary of State. It is expected that the Secretary of State will make such determination during September 2001.

56. Several respondents sought clarification or definition of ‘short term’ limiting of capacity and others pointed out apparent differences between formulations in the consultation document, the draft licence conditions and the guidance. Various respondents accepted the need for regulation of the very short term ie within day capacity limiting. Ofgem have argued that this would not include actions taken to withdraw capacity for a period of for example three months in the knowledge that during that period there would be a number of days or periods within days when the absence of that generation capacity would materially increase wholesale prices. Others recognised a case for including activities that extend beyond a single day. We considered suggestions that the scope of short term should be limited to a specific period of less than one year. We consider that, on balance, the capacity limiting condition should be able to cover behaviour up to one year if appropriate. To provide clarity on the period, we have inserted wording in the revised proposals which narrows the potential scope of the condition to a period of less than one year.

57. Ofgem in its revised guidance has sought to address concerns raised by respondents to its draft guidance consultation.

## **Sunseting**

58. Most respondents expressed views on the sunseting arrangements. Generally those in favour of the proposals argued that the conditions should remain in force beyond one year and those opposed to the proposals argued that they should be sunset after one year at the latest. However most respondents on this issue thought that it would be preferable to put in place a process to be followed at the end of twelve months, rather than to simply state that the condition would be sunset on the face of the condition. Having considered the various options suggested, we propose to specify that the conditions would cease one year after insertion except by consent from licensees to their continuation or a Competition Commission reference.

## **Extension of the system balancing condition to cover suppliers as well as generators**

59. Two thirds of respondents expressed a view on whether the system balancing condition should cover generators alone or generators and suppliers. Some respondents opposed extension to suppliers on the grounds that they were opposed – on principle – to the proposals. In general, however, respondents (including suppliers) agreed that under NETA, although it was theoretically possible for suppliers to affect the balancing and operation of the system in the same way that generators could through structuring notifications, it was very unlikely that suppliers would be practically capable (within the first year) of doing this and so thought that it was not necessary to extend the licence conditions to include suppliers. The Government accepts that suppliers are very unlikely to be in a position to game the Balancing Mechanism during the first year of NETA and so agrees that it is not necessary to extend the licence condition to include suppliers.

## **IV REVISED PROPOSALS**

### **System balancing condition**

1 The Licensee shall not knowingly or recklessly, and without reasonable cause, act in a manner (either alone or with some other person) which is likely materially to prejudice

- (a) The safe, economic and efficient operation by a transmission company of its transmission system; or
- (b) the economic and efficient balancing by a transmission company of its transmission system.

2.

- (a) Subject to subparagraph (b) below, this condition shall cease to apply on [12 months after date of insertion].
- (b) If, within [12 months after date of insertion] the Authority has made a reference to the Competition Commission under section 12 of the Act relating to the modification of this condition or any part thereof then paragraph 2(a) will not apply and this condition shall cease to apply only in accordance with paragraph 2(c) below.
- (c) If on any such reference the Competition Commission makes a report on a reference made by the Authority relating to the modification of this condition or any part thereof which does not conclude that the cessation of this condition operates or may be expected to operate against the public interest then this condition shall cease to apply 30 days after the publication of the report by the Authority.
- (d) The fact that this condition ceases to apply shall be without prejudice to any enforcement action the Authority may take in relation to a breach of this condition by the Licensee prior to such cessation.

### **Limiting capacity**

1 The Licensee shall not intentionally limit, without reasonable cause, generation or capacity availability in such a manner as materially to prejudice the interests of consumers. This paragraph shall not apply to the closure of any power station where that closure gives rise to an obligation on the Licensee to give notice to the Authority under condition [18(10)] or would give rise to such an obligation if that condition were to have effect within this licence.

2.

- (a) Subject to subparagraph (b) below, this condition shall cease to apply on [12 months after date of insertion].
- (b) If, within [12 months after date of insertion] the Authority has made a reference to the Competition Commission under section 12 of the Act relating to the modification of this condition or any part thereof then paragraph 2(a) will not apply and this condition shall cease to apply only in accordance with paragraph 2(c) below.
- (c) If the Competition Commission makes a report on a reference made by the Authority relating to the modification of this condition or any part thereof which does not conclude that the cessation of this condition operates or may be expected to operate against the public interest then this condition shall cease to apply 30 days after the publication of the report by the Authority.
- (d) The fact that this condition ceases to apply shall be without prejudice to any enforcement action the Authority may take in relation to a breach of this condition by the Licensee prior to such cessation.

## **V VIEWS INVITED**

The DTI invites views from all interested parties as to the revised licence amendments and the guidance. Responses to the document should be received by 9 October 2001.

Responses should be sent to:

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Or sent by fax to 020 7215 2867

Respondents are free to mark their replies as confidential although we would prefer, as far as possible, to be able to place responses to this document in the DTI library. Unless clearly marked 'confidential', responses will be published by placing them in the DTI library.

