

Representation - Draft Modification Report UNC 0753

Removal of Pricing Disincentives for Secondary Trading of Fixed Price NTS System Entry Capacity

Responses invited by: **5pm on 11 June 2021**

To: enquiries@gasgovernance.co.uk

Please note submission of your representation confirms your consent for publication/circulation.

Representative:	Richard Fairholme
Organisation:	Uniper
Date of Representation:	11 June 2021
Support or oppose implementation?	Support
Relevant Objective:	<p>c) Positive</p> <p>d) Positive</p> <p>g) Positive</p>
Relevant Charging Methodology Objective:	<p>c) Positive</p> <p>e) Positive</p>

Reason for support/opposition: Please summarise (in one paragraph) the key reason(s)

Uniper fully supports implementation of this proposal. We believe it is important for the continued efficient operation of the market and for competition between Shippers, that all NTS Entry Capacity is freely tradeable, without penalty. We also fully support the principle of the assignment of NTS Entry capacity, an issue we have raised for over 10 years, well before NC TAR was drafted. It is, therefore, encouraging to see some progress on this front, albeit not full assignment at this stage.

Uniper has a longstanding view that RRCs should not apply to traded Existing Contracts. As Ofgem notes in its final decision¹ on UNC 0678:

¹ https://www.gasgovernance.co.uk/sites/default/files/ggf/book/2020-05/Ofgem%20Decision%20Letter%200678%20%28Urgent%29_0.pdf

“Uniper also supported our MTD interpretation of Article 35 TAR NC but said that NGGT risks undermining Art. 35 by applying RRCs to Existing Contracts that are traded between Shippers.”

In contractual terms, the act of trading an Existing Contract is akin to novating a contract in the commercial world. In other words, even if one counterparty to the contract changes, it does not automatically create a right for the contract to be changed (or cancelled). The obligations and liabilities simply move to the new counterparty. By applying an RRC to the original contract once it is traded, we believe NGG is fundamentally altering the nature of the original contract between itself and a Shipper. In the commercial world this would not be acceptable. Mutual agreement to vary the contractual terms would be required and without this, a legal dispute would arise. As a result, we believe the UNC should now align itself with this established principle of contract law, particularly in the absence of any explicit power under NC TAR for NGG to apply an RRC, if an Existing Contract is traded. In its final decision on 0678, Ofgem noted:

“TAR NC is silent on the treatment of assigned Existing Contracts. None of the proposers have provided an adequate explanation for how a secondary trading system would operate in practice, nor indeed the underlying contractual terms that would govern it”.

We believe this proposal now provides the “adequate explanation” that Ofgem requested. Whilst we see this Mod as a significant step in the right direction, we believe an enduring, full assignment solution is still required to address remaining market inefficiencies associated with Existing Contracts, such as onward trading beyond the first trade. This proposal will also not fully address all of the unforeseeable impacts of UNC 0678 on unique, pre-existing trading agreements, business restructures or portfolio sales. The generic nature of the charging reforms are such that every possible scenario is not catered for and therefore unique or limited situations will always arise that could never realistically be foreseen. An enduring assignment solution would, therefore, go a long way to addressing these market inefficiencies between Shippers.

Implementation: *What lead-time do you wish to see prior to implementation and why?*

As soon as possible.

Impacts and Costs: *What analysis, development and ongoing costs would you face?*

No additional costs expected.

Legal Text: *Are you satisfied that the legal text will deliver the intent of the Solution?*

Yes.

Are there any errors or omissions in this Modification Report that you think should be taken into account? *Include details of any impacts/costs to your organisation that are directly related to this.*

No.

Please provide below any additional analysis or information to support your representation

Nothing further to add.