

# Decision

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## **Decision to modify special licence condition in the electricity transmission licences – Early Competition in Onshore Electricity Transmission**

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On 10 December 2024 we published a statutory consultation on proposed modifications to the special conditions (SpCs) in the Transmission Owners (TOs) electricity transmission licences to implement onshore electricity transmission Early Competition policy.

This document sets out our decision and rationale for implementing two new special licence conditions:

- Special Condition 9.20: Tender Support Activities in Onshore Electricity Transmission
- Special Condition 9.21: Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise

It also sets out our decision and rationale for implementing modifications to two existing special conditions:

- Special Condition 9.14: Restrictions on the use of certain information
- Special Condition 1.1: Interpretations and definitions

This document also includes our decision to introduce three new associated documents to the electricity transmission licences: the Onshore Information Exchange Guidance, Conflict Mitigation Methodology and Conflict Management Audit Terms of Reference.

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## 1. Introduction

- 1.1 Competition in the delivery of onshore electricity transmission network reinforcements has an important role to play in driving innovative solutions and cost efficiencies while also providing opportunities for new investment in our onshore networks. It has the potential to play a key role in the efficient delivery of our decarbonisation and Net Zero targets at the lowest cost to consumers. ‘Early competition for onshore transmission’ is one of the stated objectives in our 2024-25 Forward Work Programme.
- 1.2 In February 2024, we published a consultation document detailing our proposals on policy updates to Early Competition in onshore electricity networks<sup>1</sup>, alongside NESO’s proposed amendments to the Early Competition Plan in the Early Competition Implementation (ECI) Update<sup>2</sup>. In July 2024, we published our policy decision on the ECI Update<sup>3</sup>. This included our decision on the role of the incumbent TOs within Early Competition and conflict mitigation arrangements that would be required to ensure incumbent TOs that choose to enter a tender do not have an unfair advantage over other bidders.
- 1.3 In April 2025, the Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2025 (“Tender Regulations”) were made.<sup>(4)</sup> The purpose of the Tender Regulations is to facilitate competitive tendering in the design and delivery of onshore electricity transmission projects. Alongside The Energy Act 2023<sup>5</sup> and The Electricity (Criteria for Relevant Electricity Projects) (Transmission) Regulations 2024 (the “Criteria Regulations”)<sup>6</sup> the Tender Regulations complete the legislative framework to allow for and govern early competition in onshore electricity transmission.
- 1.4 This decision document details the modifications that we have decided to make to the Transmission Owners’ (TO’s) electricity transmission licences in order to

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<sup>1</sup> [Early Competition in onshore electricity transmission networks: policy update | Ofgem](#)

<sup>2</sup> <https://www.neso.energy/document/191251/download>

<sup>3</sup> [Decision on Early Competition in onshore electricity transmission networks: policy update | Ofgem](#)

<sup>(4)</sup> A copy of the Tender Regulations can be found here: [The Electricity \(Early-Model Competitive Tenders for Onshore Transmission Licences\) Regulations 2025](#) made on 3 April 2025. The Tender Regulations come into force on 25 April 2025.

<sup>5</sup> [Energy Act 2023](#)

<sup>6</sup> [The Electricity \(Criteria for Relevant Electricity Projects\) \(Transmission\) Regulations 2024](#)

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give effect to our July 2024 decision and to reflect the TO role in onshore competition, as per the Tender Regulations.

## **Our decision-making process**

- 1.5 We created a licence drafting working group in September 2024 consisting of Ofgem and TO representatives. The group met on a regular basis to review and develop the licence conditions. We also established a TO Licence Modifications Issues Log where the TOs were able to provide detailed feedback on the proposed licence conditions as they developed through multiple iterations of drafting.
- 1.6 In December 2024, we published a statutory licence consultation on the Modifications to the special licence conditions in the electricity transmission licences - Early Competition in Onshore Electricity Transmission: Statutory Consultation.<sup>7</sup> This set out our proposal to introduce two new special conditions and guidance documents to be read in conjunction with the new conditions as well as a modification to two existing special conditions in order to help facilitate Onshore Competition.
- 1.7 In addition to the consultation, licence working groups and issues log, following the statutory consultation we held bilateral meetings as well as email exchanges with each of the TOs. We also sought feedback from NESO and held a working group session where colleagues from Ofgem and the TOs provided feedback on the associated documents and the overall licence modification process.
- 1.8 We received four responses to the statutory consultation, three from the TOs and one from an industry participant. We have included our consideration of all the key points raised in these consultation responses and throughout our engagement with the TOs in responses in this document.

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<sup>7</sup> [Modifications to the special licence conditions in the electricity transmission licences: Early Competition in Onshore Electricity Transmission | Ofgem](#)

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### **Decision-making stages**

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<b>Date</b>	<b>Stage description</b>
10/12/2024	Stage 1: Statutory licence consultation on proposals to modify the licences open
13/01/2025	Stage 2: Statutory licence consultation closes (awaiting decision), Deadline for responses
Jan/Feb 2025	Stage 3: Responses reviewed
24/04/2025	Stage 4: Statutory consultation decision
19/06/2025	Stage 5: Modification implemented in licences

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## Document Summary

1.9 We are proposing changes to the following electricity transmission licences:

<b>Licensee</b>	<b>Licence</b>	<b>Acronym</b>
National Grid Electricity Transmission Plc	Electricity transmission licence – Special Conditions	NGET
Scottish Hydro Electric Transmission Plc	Electricity transmission licence – Special Conditions	SHET
Scottish Power Transmission Plc	Electricity transmission licence – Special Conditions	SPT

1.10 Capitalised terms not otherwise defined in this document are defined in the electricity transmission licences. The reader should refer to SpC 1.1 for the relevant definitions.

1.11 The rest of this document sets out our consideration of all responses to the statutory licence modification consultation and details our decision on the modifications to the TOs’ electricity transmission licences required to make effect to our July 2024 decision.

### **Section 2: Special Condition 9.20 Tender Support Activities in Onshore Electricity Transmission**

1.12 This section includes details of our decision for SpC 9.20 which places obligations on the TOs to provide information to the delivery body in an Onshore Transmission Tender Exercise as well as our decision on the Onshore Information Exchange Guidance. It also includes our consideration of responses to the statutory licence modification consultation.

### **Section 3: Special Condition 9.21 Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise**

1.13 This section includes details of our decision for SpC 9.21, outlines the conflict mitigation arrangements in an Onshore Transmission Tender Exercise to manage potential conflicts of interest and includes our decision on the Conflict Mitigation Methodology and Audit Terms of Reference. It also includes our consideration of responses to the statutory licence modification consultation.

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#### **Section 4: Special Condition 9.14: Restriction on the use of certain information**

1.14 This section includes our decision on amendments to SpC 9.14 in the electricity transmission licences of SHET and SPT which adds additional circumstances under which the licensees can disclose 'Confidential Information' where that disclosure is for the purposes of proposed SpC 9.20: Tender Support Activities in Onshore Electricity Transmission or proposed SpC 9.21 Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise.

#### **Section 5: Special Condition 1.1 Interpretations and definitions**

1.15 This section includes our decision on the modifications to SpC 1.1 to introduce new defined terms in accordance with proposed SpC 9.20 Tender Support Activities in Onshore Electricity Transmission and proposed SpC 9.21 Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise.

#### **Related publications**

- Ofgem, [Modifications to the special licence conditions in the electricity transmission licences: Early Competition in Onshore Electricity Transmission | Ofgem](#), December 2024
- Ofgem, [Decision on the Electricity \(Early-Model Competitive Tenders for Onshore Transmission Licences\) Regulations 2025 | Ofgem](#), April 2025
- Ofgem, [Decision on early competition in onshore electricity transmission networks](#), March 2022
- Ofgem, [Consultation on the onshore electricity transmission Early Competition commercial framework | Ofgem](#), October 2024
- Ofgem, [Decision on Early Competition in onshore electricity transmission networks: policy update](#), July 2024
- Department for Energy Security and Net Zero, [Transmission Acceleration Action Plan](#), November 2023
- [Energy Act 2023](#), October 2023
- [Electricity Act 1989](#), July 1989
- [The Electricity \(Criteria for Relevant Electricity Projects\) \(Transmission\) Regulations 2024](#), March 2024

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- [The Electricity \(Early-Model Competitive Tenders for Onshore Transmission Licences\) Regulations 2025](#), April 2025
- National Energy System Operator, [Early Competition Plan](#), April 2021
- National Energy System Operator, [Early Competition - Implementation \(EC-I Update\)](#), February 2024

**General feedback**

We believe that consultation is at the heart of good policy development. We are keen to receive your comments about this report. We'd also like to get your answers to these questions:

1. Do you have any comments about the overall quality of this document?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Are its conclusions balanced?
5. Did it make reasoned recommendations?
6. Any further comments

Please send any general feedback comments to [stakeholders@ofgem.gov.uk](mailto:stakeholders@ofgem.gov.uk)

## 2. Special Condition 9.20 Tender Support Activities in Onshore Electricity Transmission

### Questions

- Q1. Do you agree with our proposed drafting for the Tender Support Activities in Onshore Electricity Transmission licence condition?
- Q2. Do you agree with the proposed Onshore Information Exchange Guidance?

### Introduction

2.1 This SpC gives effect to our March 2022 decision on the development of early competition in onshore electricity transmission networks<sup>8</sup> which set out NESO’s proposal in the Early Competition Plan<sup>9</sup> for TOs to work alongside NESO in its network planning role. Our July 2024 decision on policy updates to Early Competition<sup>10</sup> further discussed the need for TOs to provide interface details following the selection of a project(s) at the start of the pre-tender stage. See paragraphs 2.1 to 2.9 of the statutory consultation document<sup>11</sup> for further information regarding this SpC.

### Summary of consultation responses

- 2.2 TO respondents argued that to fully engage with the licence drafting for SpC 9.20, an understanding of what obligations will be placed on NESO in its respective licence also needs to be consulted on. One TO added that it cannot agree to new obligations which are interconnected with the licence obligations of another body without being satisfied that the reciprocal obligations are appropriate.
- 2.3 TO respondents expressed concern over the proposed cost recovery mechanism for costs relating to Tender Support Activities. One TO stated that they “do not agree that T2 close-out provides a suitable mechanism where there are no

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<sup>8</sup> [Decision on the development of early competition in onshore electricity transmission networks](#), March 2022

<sup>9</sup> NESO’s [Early Competition Plan](#)

<sup>10</sup> [Decision on policy updates to Early Competition in onshore electricity transmission networks](#), July 2024

<sup>11</sup> [Modifications to the special licence conditions in the electricity transmission licences: Early Competition in Onshore Electricity Transmission | Ofgem](#)

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current allowances to be reconciled” and requested further clarity from Ofgem on the cost recovery process.

*SpC 9.20 licence drafting*

- 2.4 Of the three TOs, one TO expressed broad agreement with the licence drafting for SpC 9.20.
- 2.5 One TO suggested amendments to 9.20.4 to remove reference of the “Onshore Information Exchange Process” to simplify the drafting.
- 2.6 Two of the TOs proposed that the licence drafting should not include 9.20.8, which read: “*If the licensee determines that the requested site visits by the Delivery Body cannot be fulfilled, the licensee must as soon as reasonably practicable notify the Delivery Body and the Authority*” and argued that this level of detail would be better served in the Onshore Competition Information Exchange Guidance.
- 2.7 A TO suggested that “*direction*” should be removed from 9.20.13 and replaced with “*Onshore Competition Information Exchange Guidance*” to reflect the standard formatting used through the special licence conditions.

*Onshore Competition Information Exchange Guidance Document*

- 2.8 The TO respondents raised concerns about the terminology and designated timeframes used in the guidance document. One emphasised the need for clarity regarding the expected response times for TOs to address information requests from the Delivery Body. Another highlighted the need for clarification on the distinction between formal and informal information requests and the timing of these requests.
- 2.9 One TO expressed concern over the description of the Delivery Body’s role in the information sharing process. The TO stated issue with the proposed drafting expressing it should not “be framed as the Delivery Body managing the process for TOs responding to bidders. The Delivery Body are responsible for the procurement process”.
- 2.10 All TOs requested clarification on how the information sharing framework interacts with the System Operator Transmission Owner Code (STC), as mentioned in Table 1 and paragraph 7.2 of the Onshore Competition Information

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Exchange Guidance, and how information will be securely governed under the STC.

- 2.11 Three main concerns can be identified from the TOs feedback regarding the confidentiality agreements which will protect information in the Onshore Competition Information Exchange Process:
- Firstly, two TOs suggested that a bilateral agreement between the TO and the Delivery Body might be more suitable than the currently proposed tripartite confidentiality agreement. One of the TOs further described the proposed tripartite agreement as an inappropriate mechanism to govern the exchange of information at the ITT stage and subsequent tender stages.
  - Secondly, there were concerns raised by the TOs about the timing of the confidentiality agreements' enforcement and which areas of the information sharing framework would be covered by these agreements.
  - Thirdly, the TOs requested oversight of the confidentiality agreements before they come into force, with one TO suggesting that the terms of any confidentiality agreement should be subject to a consultation.
- 2.12 Two of the TOs provided feedback on the information requested in Appendix 1 of the Onshore Information Exchange Guidance, querying the relevance of some of the information requested in this template and suggesting wording changes to the current template.
- 2.13 One TO also suggested that the guidance should stipulate that the information provided by TOs is accurate at the time of reporting and that the Delivery Body will take responsibility for the information once received.

### **Our consideration of consultation responses**

#### *Licence drafting and Onshore Competition Information Exchange Guidance*

- 2.14 We have considered the suggested amendments to Appendix 1 of the Onshore Competition Information Exchange Guidance and made changes to the document accordingly.
- 2.15 We broadly agree with the specific amendments proposed to the drafting of SpC 9.20 provided in response and have made these modifications to the licence condition in order to aid clarity of the condition.

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2.16 We have considered the feedback on requesting clarity on formal and informal information requests. Formal information requests refer to the provision of information at the ITT stage using the template in table 2 of the Onshore Competition Information Exchange Guidance. This has been amended to scheduled information requests in the guidance. The subsequent information requests in accordance with 9.20.4(c) refer to additional information queries or unscheduled information requests following the ITT stage. The drafting has been amended to better reflect this policy intention.

*Role of NESO and Interactions with NESO licence modifications*

2.17 In our statutory consultation, we set out the intention of placing reciprocal obligations on NESO in its role as Delivery Body for an Onshore Transmission Tender Exercise. We acknowledge the feedback from TOs requesting further details on these modifications. The Modifications to the General Licence Conditions of the Electricity System Operator (ESO) – Early Competition in Onshore Electricity Transmission: Statutory Consultation is due to be published on the Ofgem Website in Spring 2025. This statutory consultation will propose a new licence condition which would place requirements on NESO in respect to its role as the Delivery Body in an Onshore Transmission Tender Exercise. Amongst other things, the proposed new condition would oblige NESO to adhere to the Onshore Competition Information Exchange Guidance.

2.18 We have considered the feedback from respondents regarding appropriately defining the role of NESO in the Onshore Competition Information Exchange Guidance and have amended the guidance to reflect the issues raised. NESO, as the Delivery Body, controls the flow of information during the tender process and is expected to seek support from TOs through information requests in cases where NESO does not have access to this information and/or clarifications are required. We remain of the view that the information requested by NESO to develop the tender documentation is at the appropriate level required.

2.19 We also acknowledge due to the early nature of the provision of information when conducting Tender Support Activities that submitted information may change. Changes will need to be managed post licence award as the CATO and the TO refine their respective designs at the interface points. The TO should not have any liability if information changes from the time it was provided, however this is not the case if there was a misrepresentation of information or if the TO

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as a bidder uses information which is more recent/advantageous to respond to a bid.

*Cost Recovery*

- 2.20 We acknowledge TO concerns about the use of the RIIO-ET2 close-out as a mechanism for cost recovery for Tender Support Activities. However, we expect there to be no more than two competitive tenders to commence during RIIO-ET2, and TO costs incurred through Tender Support Activities are expected to be minimal.
- 2.21 RIIO-ET3 arrangements are currently being engaged on and determined, including relevant funding and reporting arrangements. Therefore, we do not consider it an appropriate or necessary use of resource modifying the existing licence, RIIO-ET2 Regulatory Instructions and Guidance (RIGs) and Price Control Financial Model approximately 1 year prior to the end of a price control given the materiality involved. Our view is that the precise licence and reporting details can be consulted on and finalised through RIIO-ET3 Final Determinations.
- 2.22 The expectation is that TO cost recovery for Tender Support Activities will cover:
- Cost of collating and providing information to the Delivery Body as part of the tender documentation
  - Cost of responding to information requests during the tender process
  - Facilitation of site visits for qualifying bidders

*Confidentiality Agreements*

- 2.23 We have considered the request for clarity from respondents regarding the governing of information between the TOs and the Delivery Body. The Onshore Competition Information Exchange Guidance has been amended to provide further detail.
- 2.24 The current System Operator Transmission Owner (STC)<sup>12</sup> arrangements govern the exchange of information between the TOs and NESO. These arrangements will govern information exchanges between TOs and NESO in the development of the tender pack at the Pre-tender stage. The tripartite confidentiality agreement managed by the Delivery Body governs the exchange of information

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<sup>12</sup> [System Operator Transmission Owner Code \(STC\) | National Energy System Operator](#)

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between NESO and bidders at the ITT stage and the subsequent tender stages. This includes the information requests made by NESO to TOs during the ITT stage.

- 2.25 We do not agree with the view that the proposed tripartite agreement would be inappropriate to govern the exchange of information at the ITT stage and subsequent tender stages. The intention of the tripartite agreement is to protect all parties involved. Although bidders will not be directly asking questions to TOs, TO information will be provided to bidders and the tripartite agreement ensures protection for all parties.
- 2.26 We will continue to engage with NESO on the development of the confidentiality agreements and a draft version of the agreement has been shared by NESO with the TOs.

**Our decision**

- 2.27 Table 1 below sets out the revisions we are making to SpC 9.20 following full consideration of all stakeholder responses:

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Table 1: Revisions to SpC 9.20

<b>Reference</b>	<b>Change</b>	<b>Rationale</b>
9.20.4	Removed “, in the Onshore Competition Information Exchange Guidance”	Restructure is clearer to follow.
9.20.5(a)	Added “during an Onshore Transmission Tender Exercise”	Added to provide clarity as per consultation feedback on the defined term “Bidder”.
9.20.4(b)	Replaced “formal” with “scheduled”	To reflect updated policy decision following assessment of consultation responses.
9.20.4(c)	Added “accordance with paragraph”	Added to provide clarity.
9.20.5(b)	Added “during an Onshore Transmission Tender Exercise”	Added to provide clarity.
9.20.7	Added “Qualifying”	As per updated definition in SpC 1.1
9.20.12(C)	Replaced “formal” with “scheduled”	To reflect updated policy decision following assessment of consultation responses.
9.20.13	Removed “, by direction”	Consistency with existing licence drafting.
9.20.13(a)	Replaced “direction” with “Onshore Competition Information Exchange Guidance”	Consistency with existing licence drafting.
9.20.13(b)	Replaced “direction” with “Onshore Competition Information Exchange Guidance”	Consistency with existing licence drafting.
9.20.13(c)	Replaced “direction” with “Onshore Competition Information Exchange Guidance”	Consistency with existing licence drafting.

2.28 Following consideration of the consultation responses we have made a number of revisions to the Onshore Competition Information Exchange Guidance – a tracked version showing all the changes that have been made has been included as an Appendix to this decision document.

### **3. Special Condition 9.21 Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise**

#### **Questions**

- Q3. Do you agree with our proposed drafting for the Conflict Mitigation Arrangements condition?
- Q4. Do you agree with our Conflict Mitigation Methodology and Conflict Management Audit Terms of Reference associated documents?

#### **Introduction**

- 3.1 This SpC gives effect to our July 2024 decision<sup>13</sup> which set out the conflict mitigation arrangements that are required to manage and mitigate potential competitive advantages a TO could have in an Onshore Transmission Tender Exercise, should a TO decide to submit a bid. See paragraphs 3.1 to 3.6 of our statutory consultation<sup>14</sup> for further information regarding this SpC.

#### **Summary of consultation responses**

- 3.2 TOs raised concerns about the level of obligations the Conflict Mitigation condition introduces along with its associated documents. One TO argued that the requirement to submit an external audit report in order to participate will create unnecessary barriers to entry or costs for TOs. Another TO stated that the Conflict Mitigation Methodology introduces new policies and requested further explanation on the proposed policy areas. Additionally, a TO queried the value in requiring all members of the Bidding Unit to sign the Declaration of Interest Form.
- 3.3 One of the respondents support the proposed licence modifications but, emphasised the need for Ofgem to ensure that the proposed conflict mitigation arrangements are robust enough to give confidence that the competitive process

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<sup>13</sup> [Decision on policy updates to Early Competition in onshore electricity transmission networks](#), July 2024

<sup>14</sup> [Modifications to the special licence conditions in the electricity transmission licences: Early Competition in Onshore Electricity Transmission | Ofgem](#)

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is fair and therefore maximise the number of bidders. This includes the use of regulatory tools alongside the use of the licence obligations.

- 3.4 Two of the TOs also highlighted the importance for similar obligations to exist within the CATO licence and requested further details on the interactions with CATO licence.

*SpC 9.21 licence drafting*

- 3.5 One of the TOs requested clarification on the assets referred to in 9.21.9, which read: *"With respect to Standard Conditions B5 (prohibition of cross-subsidies) and B6 (Restriction on Activity and Financial Ring Fencing), the licensee must ensure that any assets related to an Onshore Transmission Tender Exercise are separable from any other asset of the licensee."*

- 3.6 A TO suggested merging 9.21.13 with 9.21.12 for simplicity.

- 3.7 A TO recommended amending the title for Part D in the SpC to include reference to the Conflict Mitigation Methodology.

- 3.8 One TO proposed removing paragraph 9.21.16 and simply refer to the Conflict Mitigation Methodology.

- 3.9 One TO suggested moving paragraphs 9.21.22 - 9.21.24 to follow 9.21.16 for better readability.

- 3.10 A TO stated in paragraph 9.21.23, the timing of the obligation in (a) should be clarified, as well as the interaction of (a) with (d). Additionally, clause (d) should refer to 9.21.15(a).

*Conflict Mitigation Methodology and External Audit*

- 3.11 One respondent stated that the physical and electronic separation of a licensee and its Bidding Unit should take place from the commencement of the pre-tender phase until the CATO licence is entered into. They further suggested the restrictions on movement should extend to relevant shared services including legal and should ensure separation of information up to board level. Clarity on whether shared services, such as legal, are included within the scope of employee separation has also been requested by TOs.

- 3.12 Two of the TO respondents queried the use of terms within the Conflict Mitigation Methodology (CMM) and suggested improvements to ensure consistency

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throughout the licence and the associated documents. One TO highlighted the use of “Conflicts Mitigation Statement” and “Conflicts Methodology Statement” interchangeably. Additionally, they suggested that the CMM should include a paragraph similar to 1.4 of the Onshore Competition Information Exchange Guidance to clarify defined terms.

- 3.13 To improve clarity, one TO respondent suggested paragraph 1.1 should include “through a bidding unit” after “and by participating as a bidder.” Additionally, the TO suggested paragraph 1.7 should explicitly state that compliance with the Conflict Mitigation Statement (CMS) has to be demonstrated to Ofgem.
- 3.14 Two of the TO respondents considered it onerous to mandate the CMS to be approved by the TO’s board of directors. In engagement subsequent to the publication of the statutory consultation, TOs recommended this approval to be delegated to a single director, similar to the Single Appointed Director in SpC 9.18 Business separation requirements and compliance obligations.
- 3.15 Two of the TOs raised concern about the duration of Conflict Mitigation Arrangements and requested Ofgem clarify when these arrangements would no longer be in place. One TO sought clarification on the duration of the requirement for a Conflict Mitigation Officer and a timeline for submitting compliance reports.
- 3.16 One TO raised concern over the requirements in Appendix A – A1.2 where each Bidding Unit member is required to sign the Declaration of Interest Form. The TO described this process as “overly burdensome” and suggested a process where a member of upper management signs on behalf of all employees.
- 3.17 One TO requested clarification on the policy intentions in Appendix A – A1.2, stating that a few of the proposed requirements in Appendix A of the Conflict Mitigation Methodology do not accurately reflect, or are inconsistent with, Ofgem’s July 2024 decision. Specifically:
- Bullet point 2 of para A1.2 does not accurately reflect the July 2024 decision and should be amended to read “separation of the Bidding Unit up to, but not necessarily including, the TO parent board”. For reference, bullet point 2 read: “A clear organisation structure that shows the separation of the Bidding Unit up to Board level, including lines of reporting.”.

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- Bullet point 1 of para A6.1 was not included in the July 2024 decision. For reference, bullet point 1 stated that, in respect to the TO’s proposed arrangements for internal and external scrutiny of their compliance with the measures set out in the CMS, those arrangements should include the appointment of “a Conflicts Management Officer (CMO) to monitor compliance with the approved CMS on an ongoing basis and provide a Compliance Report for the TO to submit with its ITT submission”.
- Bullet point 5 of para A6.2 was not included in the July 2024 decision. For reference, para A6.2 stated that the CMS must include sufficient information for Ofgem to be able to confirm that the requirement described in para A6.1 has been satisfied and then listed what information this should include (but is not limited to). Bullet point 5 read: “the TO will prepare a report prior to the PQ stage on the measures put in place and how they achieve the overall obligations on the TO (to be sent to Ofgem to review)”.

3.18 One TO recommended that the CMM and the Audit Terms of Reference clearly state the conflict mitigation obligations placed on a TO when a project is not in their transmission area. In particular the TO recommended Ofgem apply a reduce conflict mitigation scope for TOs who choose to bid in projects outside of their transmission area.

3.19 The TOs requested clarification on Ofgem’s policy intentions for the auditor selection process. One TO expressed that given their experience with external auditors, Ofgem should not be exclusionary and restrictive about the selection of auditors. Another respondent suggested including a provision for permitting the Delivery Body to conduct independent audits on the TOs conflict management protocols.

3.20 One respondent raised concern on the risk of the incumbent TO Bidding Unit using the regulated business to give them an unfair advantage in pricing their bid with mechanisms such as the Advanced Procurement Mechanism (APM).<sup>15</sup>

## **Our consideration of consultation responses**

### *Licence drafting*

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<sup>15</sup> [Electricity Transmission Advanced Procurement Mechanism](#)

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- 3.21 We broadly agree with the specific amendments proposed to the actual drafting of SpC 9.21 provided in response and have made these changes to the licence condition in order to aid clarity of the condition.
- 3.22 We engaged with TOs regarding the clarification of the terms used in SpC 9.21 in a working group following the consultation:
- In paragraph 9.21.5 TOs queried the use of “immediate parent company”. We recognise that different TOs will have a different definition of immediate parent company and therefore expect TOs to demonstrate this within their CMS.
  - In paragraph 9.21.9 TOs have raised that at this point in the tender process there will not be any transmission assets. Whilst we recognise that at present this is true, should a TO bid under its licence and win, this keeps the assets separable from the wider portfolio. This inclusion of assets was therefore added in as a forward-looking proposal.
  - In paragraph 9.21.9, clarity was also requested on the duration of which CATO assets are to be separated from the TO. The intention of paragraph 9.21.9 is to ensure that CATO asset(s) are kept separate not only to mitigate conflicts of interest, but also because the Tender Revenue Stream based regime is separate from the wider Regulated Asset Value regime regulated under RIIIO. Whilst conflict mitigation arrangements may no longer apply once a CATO is in place, if the TO is successful in being licensed as a CATO the TO would still need to comply with Standard Conditions B5 (prohibition on cross-subsidies) and B6 (Restrictions on Activity and Financial Ring Fencing) to keep the asset(s) separate from the TOs wider portfolio.
  - In paragraph 9.21.26 TOs queried the meaning of the term “not affiliated with the Bidding Unit”, the policy intention here is the “external” auditor therefore must not in relation to a TO and a Bidding Unit, be a holding company of the TO or the Bidding Unit, subsidiary of the TO or the Bidding Unit, or any subsidiary of a holding company of the TO or Bidding Unit. The Conflict Management Audit Terms of reference has been amended to provide clarity on this.

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3.23 We have considered the feedback on introducing other regulatory tools alongside the use of licence obligations, such as incentive mechanisms. While this is not something we have currently developed and are unable to introduce at this stage, it is something we could consider for future tender exercises should any issues become apparent during the early tender rounds.

*Conflict Mitigation Methodology*

3.24 We recognise the TO respondents request for the methodology to provide further clarity when establishing the policy intention. Chapter 1 of the CMM has been amended to improve the clarity of this based on the provided feedback. To further alleviate these concerns, when drafting the CMS, it is our view that TOs utilise the iterative process with Ofgem for this ahead of approval of the CMS in which additional concerns, if any, can be addressed.

3.25 In respect to the view of one TO respondent that a few of the proposed requirements in Appendix A of the Conflict Mitigation Methodology do not accurately reflect, or are inconsistent with, our July 2024 decision, responding to each of the points noted at paragraph 3.17 above:

- ‘Bullet point 2 of para A1.2 does not accurately reflect the July 2024 decision and should be amended to read “separation of the Bidding Unit up to, but not necessarily including, the TO parent board”’: we agree with this point and have amended the drafting of the CMM to state “A clear organisation structure that shows the separation of the Bidding Unit up to, but not necessarily including, the TO parent board.”
- ‘Bullet point 1 of para A6.1 was not included in the July 2024 decision’: we disagree with this point. Our prior consultations and decisions discussed the importance of having appropriate scrutiny of TOs conflict mitigation arrangements and the submission of the CMS. In our February 2024 policy update paper,<sup>16</sup> figure 5 on page 36 introduced the submission of a conflicts methodology and the submission of compliance reports. In our July 2024 decision,<sup>17</sup> paragraph 3.12 set out the decision to introduce a ‘conflicts methodology statement’ which sets out the conflict mitigation arrangements required. The proposed role of a CMO is also not a new

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<sup>16</sup> [Early Competition in onshore electricity transmission networks: policy update | Ofgem](#)

<sup>17</sup> [Decision on Early Competition in onshore electricity transmission networks: policy update | Ofgem](#)

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concept. Our February 2024 policy update paper<sup>(18)</sup> stated that we consider, at a minimum, there should be internal scrutiny by a person appointed by the TO to oversee its compliance with the conflict mitigation measures, which should include the person preparing a report on the measure put in place and how they achieve the overall obligations on the TO to be sent to Ofgem to scrutinise the outcome. In addition, we have now consulted on the specific CMO proposal as part of our December 2024 consultation and further discussed the proposal with TOs in our February 2025 working group. We recognise clarity is required on the role of the CMO and its interactions with the CMM. We have updated the CMM to include an outline of the CMO’s role in chapter 1.

- ‘Bullet point 5 of para A6.2 was not included in the July 2024 decision’: We disagree with this point noting the rationale provided for compliance reports in the paragraph above.

3.26 We do not agree with the suggestion by one TO that for projects that are outside their transmission area, a reduced conflict mitigation scope should be applied. Whilst we considered removing the employee transfer restriction on TOs bidding for projects outside their transmission area, subsequent engagement with TOs following the statutory consultation revealed concerns. One TO highlighted that this could confer a competitive advantage to incumbent TOs who through network planning activities, have access to knowledge that is not available to external bidders. Chapter 3 of our July 2024 decision<sup>19</sup> sets out the policy intention to ensure equitable treatment and mitigate any perceived or actual competitive advantages held by incumbents. Therefore, after considering all the information we received from consultation responses and TO engagement, we have decided that while the benefit of network planning involvement may be limited, we consider it prudent to maintain the restriction for the purposes of ensuring equitable treatment and mitigating any perceived or actual competitive advantage. The full conflict mitigation scope outlined in the Conflict Mitigation Methodology will thus apply to all TOs who participate in an Onshore Transmission Tender Exercise.

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<sup>(18)</sup> At para 4.26.

<sup>19</sup> [Decision on policy updates to Early Competition in onshore electricity transmission networks](#)

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- 3.27 In our July 2024 decision, paragraph 3.12 included provision for any involvement of other employees of the TO in the bidding unit to be specified in the methodology, including rules governing this involvement. This also includes the details of employees in shared services. Although shared services are initially exempt from the employee separation, TOs must provide details, if any, of employees involved in shared services in their CMS. Once we are notified of any employees involved in shared services, if we consider there is any unfair advantage upon TOs sharing these details, we will make an informed decision on whether the separation is required or not. Further information on this has been included in the updated CMM and Audit Terms of Reference.
- 3.28 We note one respondent’s concern of the unfair TO advantage should they be able to utilise the APM to price their bids lower than other bidders. As stated in our consultation on the APM,<sup>20</sup> *‘we intend to design the APM in a manner that avoids distortion of competitive tenders, by ensuring that activity relating to projects that are to be competitively tendered under the CATO regime are not eligible for funding through the APM’* and we consider this policy approach, applied with the ring-fencing arrangements set out in the CMM, ensures TOs can confer no unfair advantage.
- 3.29 We remain of the view that all members of the Bidding Unit are to sign the Declaration of Interest Form. We believe this is an essential part of the conflict mitigation arrangements, providing the necessary assurance to the market that is required for a competitive procurement process. Chapter 1 of the CMM has been amended to include the process for the Declaration of Interest Form(s).
- 3.30 We have considered one of the TOs view on adopting the approach to SpC 9.18 when seeking approval of the CMS. We have therefore adopted a similar approach where authority for approval of the CMS is delegated to a director of the TO’s board of directors. This change should alleviate TOs concerns but does not have a wider impact on the operation of the licence condition.
- 3.31 We agree with the point raised by one respondent that the text *“For a licence holder, Ofgem may also pursue this as a breach of licence”* in paragraph 1.9 of the Conflict Mitigation Methodology should be removed. TOs reserve the right to

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<sup>20</sup> [Electricity Transmission Advanced Procurement Mechanism](#) Paragraph 1.16

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bid in an Onshore Transmission Tender Exercise. Being found ineligible to bid under the Tender Regulations would not, of itself, constitute a licence breach.

*Discontinuation of Conflict Mitigation Arrangements*

3.32 As requested by the TOs, we have added the arrangements for discontinuing the conflict mitigation arrangements to the CMM. It is our policy intent that these arrangements will need to remain in place until the determination of a Preferred Bidder.

3.33 TOs must make a written request to Ofgem to remove the arrangements within the CMS when the TO considers the requirements no longer apply and want to revert to a business-as-usual structure, and Ofgem will consider this request and respond to the TO.

*External Audit*

3.34 We remain of the view that an External Audit is necessary in managing conflicts of interest in an Onshore Transmission Tender Exercise. While the internal scrutiny through the CMS is likely to identify any issues or shortcomings in the TO's compliance with the arrangements, we consider that independent external scrutiny is also necessary in providing additional assurance for both Ofgem and the market.

3.35 As it will be the TOs' responsibility to appoint the auditor, prior to procuring the audit, TOs must share auditor details with Ofgem with their reasoning for selection. We may, however, consider specifying minimum requirements for the credentials and qualifications of the external auditor to ensure the party selected has demonstrable independence and the required level of expertise. To provide clarity, we have amended the "Appointment of External Auditor" section to the "External Auditor Appointment Requirements" which details the requirements for appointing an external auditor.

3.36 We require any external auditor to be accredited by the Royal Institution of Chartered Surveyors (RICS). RICS has developed comprehensive frameworks and guidance notes for conflict avoidance and dispute resolution. We therefore view this requirement as essential in providing the necessary confidence in this external audit process.

3.37 In response from feedback from TOs the Audit Terms of Reference has been amended to provide clarity on Ofgem's role as the decision maker in the audit

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process. The auditor will rank conclusions reflecting the degree of compliance. The results of the audit will be taken into consideration, but Ofgem will make the final decision on whether the non-compliance gives rise to any unfair advantage to the TO and what further actions are available, including the TO’s continued participation as a Bidder in a tender exercise.<sup>21</sup>

3.38 We acknowledge the provided feedback on providing the Delivery Body with the authority to conduct independent audits on the TOs conflict mitigation arrangements and we aim to consider this proposal for future tender exercises.

**Our decision**

3.39 Table 2 below sets out the minor revisions we are making to SpC 9.21 following full consideration of all stakeholder responses:

Table 2: Revisions to SpC 9.21

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<sup>21</sup> The Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2025 establish a process and grounds for disqualification of a bidder from a tender exercise. One of those grounds addresses circumstances where a bidder is deriving an unfair advantage from a conflict of interest and that advantage cannot be avoided or Ofgem considers the bidder will not take the necessary steps to ensure it does not derive an unfair advantage (see regulation 23 and paragraph 1(o) of Schedule 9).

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<b>Reference</b>	<b>Change</b>	<b>Rationale</b>
9.21.2	Removed “business”	Consultation responses requested a consistent use of terms when referencing the separation of the licensee and the bidding unit.
9.21.3	Replaced “unfair commercial advantage, including any advantage from a preferential or discriminatory arrangement” with “Unfair Commercial Advantage”	Consistency with defined terms.
9.21.12	Paragraph removed	Removed and merged with paragraph 9.21.13 for a clearer flow.
9.21.13	Replace “For the avoidance of doubt, for the purposes of paragraph 9.21.12 and subject to paragraph 9.21.14, the licensee must not disclose, authorise access to, or authorise use of Confidential Information to” with “Except as provide for in paragraph 9.21.13 the licensee must not disclose, authorise access to, or authorise use of Confidential Information to”	Removed and merged with paragraph 9.21.12 for a clearer flow.
9.21.13 (a)(iv)	Replaced “2024” with “2025”	To reflect the Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2025.
Part D	Added “and Conflict Mitigation Methodology”	To better reflect intention of Part D as per consultation feedback.
Part D	Restructured paragraph order and updated within-condition references	Consultation responses requested a restructure. Part D is now clearer to follow, and references now ordered correctly.
9.21.14	Replaced “PQ” with “Pre-Qualification”	Consistency with defined terms.
9.21.14(b)	Added “prepare and”	Added to provide clarity.
9.21.14 (c)	Replaced “by the licensee’s board of directors.” With “and signed by a director of the licensee’s board of directors.”	Consultation responses and further engagement have made clear the TO preferred approach is to delegate the approval of the CMS to a single director rather than the entire TO board. This change alleviates TOs concerns but does not have a wider impact on the operation of the licence condition.
Part E	Updated within-condition references	References now ordered correctly.
9.21.24	Replace “as defined” with “in the manner specified”	Replaced to align with the updated Conflict Management Audit Terms of Reference.
9.21.25	Added “in respect to an external audit:”	To make clear that this applies to the external audit.
9.21.25(a)	Replaced “party which” with person who	Replaced to provide clarity.

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9.21.25(a)	Replaced “as defined in the Conflict Management Audit Terms of Reference” with “(which has the meaning given in paragraph 1.8 of the Conflict Management Audit Terms of Reference”	Replaced to align with the updated Conflict Management Audit Terms of Reference.
9.21.25(b)	Added “ (b) the licensee has complied with any requirements that have been specified in respect to the appointment of that person in accordance with paragraphs 1.9-1.12 of the Conflict Management Audit Terms of Reference.”	Added to align with the updated Conflict Management Audit Terms of Reference.
9.21.29 (a)	Replaced “the” with “an external”	Replaced to provide clarity.

3.40 Following consideration of the consultation responses and to ensure alignment with the provisions in SpC 9.21, we have made a number of revisions to the Conflict Mitigation Methodology and Audit Terms of Reference – a tracked version showing all the changes that have been made has been included as an Appendix to this decision document.

## **4. Special Condition 9.14 Restriction on the use of certain information**

### **Questions**

- Q5. Do you agree with our proposed modifications to SpC 9.14 Restriction of the use of certain information?
- Q6. Do you propose any modifications to the proposed licence drafting?

### **Introduction**

- 4.1 The amendments to SpC 9.14 include reference to the new SpC 9.20 Tender Support Activities in Onshore Electricity Transmission and SpC 9.21 Conflict Mitigation Arrangements for Competitive Tenders in Onshore Electricity Transmission. See paragraphs 4.1 to 4.4 of the statutory consultation<sup>22</sup> for further information regarding this SpC.

### **Our decision**

- 4.2 The statutory consultation received no comments on the proposed amendment of SpC 9.14 and therefore we are modifying SpC 9.14 as per the proposals set out in the statutory consultation.
- 4.3 The amendment will only apply for SHET and SPT<sup>23</sup>.

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<sup>22</sup> [Modifications to the special licence conditions in the electricity transmission licences: Early Competition in Onshore Electricity Transmission | Ofgem](#)

<sup>23</sup> SpC 9.14 Restrictions of the use of certain information only applies to the electricity transmission licences of SHET and SPT.

## 5. Special Condition 1.1 Interpretations and definitions

### Questions

Q7. Do you agree with our proposed modifications to SpC 1.1 Interpretations and definitions?

### Introduction

5.1 Modifications are required to SpC 1.1 as there are a number of new defined terms in proposed SpC 9.20 Tender Support Activities in Onshore Electricity Transmission and SpC 9.21 Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise. See paragraphs 5.1 to 5.3 of the consultation<sup>24</sup> for further information regarding this SpC.

### Consideration of consultation responses

5.2 The respondents proposed a number of modifications to the proposed definitions that we consulted on. The responses, and our consideration of them, is set out in table 3 below:

Table 3: Revisions to SpC 1.1

Defined term	Respondents view	Ofgem view
Conflicts Management Officer	This term is not used in the licence and therefore does not need to be in Special Condition 1.1. If it is used in the Conflict Management Methodology, then it should be defined there.	The term is referenced in SpC 9.21 paragraph 9.21.15 (b)(vi), and the intention is for the term to have the meaning given in the CMM.
Tender Support Activities	Decapitalise "Licensee"	Agreed, this has been amended.
Bidder	We believe that there is a need for further clarity on the definition of a Bidder as they progress through the competitive process. Particularly when a party ceases to be a "Bidder". We would recommend that a Bidder is only a Bidder for the duration of the tender	We think it is appropriate that the meaning of 'Bidder' takes on the same meaning for the term as is provided in the Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2025. Under the regulations, "bidder" is defined as "a

<sup>24</sup> [Modifications to the special licence conditions in the electricity transmission licences: Early Competition in Onshore Electricity Transmission | Ofgem](#)

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	exercise, after which time the award is granted, the Bidder will then cease to be a Bidder or become a CATO.	person, or a group of two or more persons acting together, that submits a pre-qualification questionnaire to the delivery body in accordance with these Regulations". This is because following this stage, the bidder can be removed from the tender exercise, be taken forward as a "qualifying bidder", out of which a preferred and successful bidder can be chosen. We have also reviewed the instances where the term is used in the condition and consider it is sufficiently clear from the text who is being referred to. We have inserted the text "during the Onshore Transmission Tender Exercise" to para 9.20.5(b) to ensure clarity.
Delivery Body	We propose the definition of "Delivery Body" should be tied to Section 6BB of the Electricity Act. Although the NESO is currently the Delivery Body, there should not be an inference that the defined term "Delivery Body" should be read to mean the NESO as this could change. We would encourage Ofgem to consider this.	In our view, the proposed definition is appropriate and aligns with the meaning given to "delivery body" in the Tender Regulations.
PQ Stage	The term "qualifying bidders" as used in the definition of "PQ Stage" may, in itself, require further explanation.	Agree with this suggestion. "Qualifying Bidder" has been included as a new defined term in SpC 1.1
Bidding Unit	Definition should be amended to provide clarity on shared services.	We consider the original drafting is already sufficiently clear and the suggested additional text is unnecessary. Our position on shared services is detailed in paragraph 3.29 of this decision document.

**Our decision**

5.3 We have decided to modify the definitions we consulted on as per the comments in the table above. Typographical updated references to Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2025 have also been addressed.

5.4 The table below shows the modifications to SpC 1.1:

Table 4: New defined terms

Term	Definition
New terms	

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Bidder	has the meaning given in Regulation 2 of the Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2025.
Bidding Unit	means any part of the licensee’s Transmission Business (or an Associate of the licensee) that intends to participate, or is participating in, an Onshore Transmission Tender Exercise as a Bidder.
Conflict Management Audit Terms of Reference	means the document of that name published on the Authority’s Website in accordance with Part E of Special Condition 9.21 (Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise).
Conflict Mitigation Methodology	means the document of that name published on the Authority’s Website in accordance with Part D of Special Condition 9.21 (Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise).
Conflict Mitigation Statement	means the document of that name required to be prepared by the licensee in accordance with Part D of Special Condition 9.21 (Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise).
Conflicts Management Officer	has the meaning given to that term in the Conflict Mitigation Methodology.
Delivery Body	means the body designated by Regulation 3 of the Electricity (Designation of Delivery Bodies) (Transmission) Regulations 2023.
Invitation to Tender (ITT) Stage	means the stage of an Onshore Transmission Tender Exercise for the Delivery Body to determine which Qualifying Bidder is to be selected to become the provisional preferred bidder in respect of that Onshore Transmission Tender Exercise.
Onshore Competition Information Exchange Guidance	means the document of that name issued by the Authority in accordance with Part B of Special Condition 9.20 (Tender Support Activities in onshore electricity transmission).

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Onshore Competition Information Exchange Process	means the process of the licensee providing information to the Delivery Body in respect of an Onshore Transmission Tender Exercise.
Onshore Transmission Tender Exercise	has the meaning given in Regulation 2 of the Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2025.
Pre-Qualification (PQ) Stage	means the stage of an Onshore Transmission Tender Exercise for the Delivery Body to determine which Bidders are to become Qualifying Bidders in respect of that Onshore Transmission Tender Exercise.
Qualifying Bidders	has the meaning given in Regulation 2 of the Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2025.
Tender Support Activities	means any activity undertaken by the licensee under or pursuant to Special Condition 9.20 (Tender Support Activities in onshore electricity transmission).

5.5 An updated SpC 1.1 for each of the TOs with all changes shown in tracked changes is published as part of this decision.