

May 2002

Restriction on Self-Supply

Initial Proposals

Executive summary

This document discusses the restriction on self-supply that is in some electricity supply licences. It describes the history of this restriction, which was first introduced when both retail and wholesale markets were much less competitive than today, and there was a concern that companies with interests in both activities ('vertically integrated companies') could exploit market power in either or both supply and generation activities, thereby adversely affecting the development of competition in both activities. Ofgem considers that the development of competition in these markets means the restriction is no longer appropriate, and that if anti-competitive behaviour arises, it can best address this using Ofgem's powers under the Competition Act 1998.

The document argues that given the extent to which competition in generation and supply activities has developed, and Ofgem's powers under general competition law, it is no longer necessary to have a self supply restriction. Since the announcement, and introduction of NETA, the liquidity of the wholesale electricity trading markets has increased very significantly, and as a result of disposals by incumbents and new entry, concentration in the generation market is significantly lower than it was in the early years after privatisation in 1990. In retail markets, where in-area customers are still charged higher prices by ex-PES suppliers, this is leading to rapid erosion of market share. Ofgem's 2001 review of domestic electricity supply competition found that there were few barriers to entry, and that customers were continuing to switch away from the incumbent supplier at rates of 55,000 per week.

Moreover, Ofgem notes that the licences of some electricity suppliers with generation affiliates do not include a restriction on self-supply, thereby introducing a distortion in the electricity supply sector. Currently, Ofgem does not have the information required to enforce the restriction, and disproportionate further regulation would be necessary to make the restriction enforceable.

Therefore Ofgem proposes to remove the restriction. If, in the light of the responses, Ofgem decides to proceed to remove the self-supply restriction, the process for effecting the change will include a 28-day consultation period. For the avoidance of doubt, that period is in addition to time allowed for this consultation.

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1. Introduction

Purpose of this document

- 1.1 This document proposes ending the restrictions on some suppliers' ability to use electricity sourced from affiliated generation facilities to supply domestic customers within the former Public Electricity Supplier area(s) corresponding to their licence (their "in-area" customers)¹. This restriction is referred to in this document as the "self-supply restriction".

Rationale

Timing of review

- 1.2 As described in Chapter 2, the self-supply restriction dates from when licensees supplied electricity to nearly all customers within their own region, and when the competitiveness and liquidity of wholesale electricity trading were significantly less than today. The condition was intended to help ensure that companies that carried out both supply and generation activities ('vertically integrated companies') could not abuse any market power in these activities through their contracting for electricity. Continued high levels of switching by retail customers have substantially eroded the market share of suppliers with ex-PES obligations (the ex-PES suppliers). The introduction of the New Electricity Trading Arrangements (NETA) has improved wholesale trading liquidity. Concentration in the generation market has declined markedly since privatisation as a result of disposals by incumbents and new entry. These factors suggest it is appropriate to review whether the self-supply restriction remains justified.
- 1.3 In addition, the current condition explicitly links the existence of price controls for retail activities and the self-supply restriction.² The removal of price controls was effected on 1 April 2002, which is an additional reason for considering whether the time is right to remove the self-supply restriction.

¹ See Appendix 1 for details of licences that contain the condition and the regions in which the condition applies.

1.4 Finally, during the consultation on the supply price controls Ofgem received representations suggesting that, following NETA's introduction and Ofgem's retail price control proposals, Ofgem should review the justification for this condition³. Ofgem has also received representations that the condition must remain and that Ofgem should now demonstrate how it would enforce it.

Ofgem's preferred approach

1.5 In general the scope for abuse resulting from vertical integration is reduced if both sectors are competitive. Ofgem's preferred approach is to end the self-supply restriction because we consider that competition is well developed in supply and generation activities, and because Ofgem has strong competition law powers to address anti-competitive behaviour.

1.6 In addition, Ofgem thinks that there are likely to be costs and risks of retaining the restriction including:

- ◆ the restriction is present in some licences and not others. This is potentially discriminatory, given that an equivalent effect to vertical integration can be achieved through long-term contracts. Accordingly, the restriction may introduce distortions into the electricity supply sector; and
- ◆ new rules would need imposing to make the restriction enforceable (as described in paragraphs 3.18-3.23). This would create significant extra regulatory cost.

1.7 We judge that the benefits to consumers from retaining the restriction would be small, as the concerns about the level of competition in supply and generation activities that it was designed to mitigate, have reduced substantially (see paragraphs 3.3-3.11).

Views invited

² The condition allows Ofgem to issue a direction that it not apply, with effect from a date no earlier than the first date on which any of the supply price control conditions of the relevant supply licence are modified. The full text of the condition is included in Appendix 2.

³ Non-confidential written responses to the price control consultations can be found on Ofgem's website at http://www.ofgem.gov.uk/projects/pricereg_index.htm

1.8 Views are invited on the issues in this document, and in particular on the questions laid out in Chapter 4. Responses are requested by 8 July 2002. Please address responses to:

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1.9 Ideally responses should be sent electronically. Unless marked clearly as confidential, all responses will be published by placing them in Ofgem's library and on Ofgem's website.

1.10 If you wish to discuss any of the issues raised in this document please contact either Chris Bowley (chris.bowley@ofgem.gov.uk or 020 7901 7372) or David Howdon (david.howdon@ofgem.gov.uk or 020 7901 7420).

2. Background

- 2.1 This chapter summarises the history of the restriction on self-supply, and its effects. It outlines current problems with enforcing of the condition. It also describes Ofgem's powers under the Competition Act 1998, which could provide an alternative means of addressing the problems of vertical integration.
- 2.2 Some representations to Ofgem suggested that, alongside the self-supply restriction in supply licences, we should consider certain other conditions in generation licences (e.g., rules on cross-subsidisation and non-discrimination). Ofgem does not believe these rules relate particularly to vertical integration. They are therefore outside the scope of this paper.

History of the restriction

- 2.3 The self-supply restriction was first introduced as a condition of clearance of the acquisition by a supplier of generation capacity. The same restriction was subsequently imposed as a condition for clearance of a number of other mergers and acquisitions. Consequently, by 1 October 2001, the restriction was in force for the licensees that would subsequently become the licensees listed in Appendix 1.
- 2.4 The restriction only applies to supplies to in-area customers in England and Wales.
- 2.5 On 1 October 2001, following representations from interested parties, including Ofgem, the licensing schemes made by the Secretary of State took effect. In addition to introducing standard licence conditions, schemes included as a special condition the self-supply restriction in the supply licences treated as granted to those former Public Electricity Suppliers already subject to the restriction. Appendix 1 gives a list of the licences which contain the restriction on self-supply.
- 2.6 No equivalent restriction is present in gas supply licences, and gas suppliers are free to source their gas from producers within their corporate group.

Effect of the restriction

- 2.7 The restriction on self-supply condition requires that the supplier should not
- “enter into any new electricity purchase contract ... with an [affiliated] electricity generator for the benefit of that part of the licensee’s [supply business] which comprises the supply of electricity to former designated customers [i.e., in-area customers].” and shall not “...[vary] any electricity purchase contract ... [in relation to in-area supply to designated customers] ... to which an affiliate or a related undertaking of the licensee is a part”. The full text of the provision is included in Appendix 2.
- 2.8 The condition reflects concerns prevalent at the time of introduction. At that time Offer was about to introduce retail competition for domestic customers and Public Electricity Suppliers (PESs) served all domestic customers in-area. Moreover, almost all existing generation capacity in England and Wales was concentrated within three corporate groups.
- 2.9 As noted above, the self-supply restriction was introduced when suppliers and generators started to integrate, when competition in generation and supply activities was not well developed.
- 2.10 The restriction was intended to ensure that the PESs’ supply competitors could secure electricity for their new customers at market prices, by preventing the PESs from locking up available generation capacity. The restriction was intended to result in generation affiliates having to sell their output to all competing suppliers, thereby improving wholesale market liquidity, and helping the development of supply market competition.

Current enforcement

- 2.11 The condition was originally created when the electricity purchased by a PES could reasonably be regarded as purchased for the benefit of the in-area customers, as they constituted 100% of the supplier’s portfolio.
- 2.12 This situation no longer applies. Ex-PES suppliers have built businesses of national scope, so that the proportion of in-area customers within their portfolios

is well below 100%⁴. Supply businesses may choose to purchase wholesale electricity on a single portfolio basis. Therefore, even if Ofgem were to track ex-PES suppliers' wholesale purchasing, it would still not be able to confirm whether the internally-sourced electricity was being bought for the benefit of in-area customers.

- 2.13 Moreover, under NETA, the great majority of electricity is traded on the over the counter (OTC) market, in which there is no central register of contracts. Therefore, Ofgem does not have a data-source enabling it to monitor compliance with the restriction.

Ofgem's powers under the Competition Act 1998⁵

- 2.14 Ofgem is governed by the Gas and Electricity Markets Authority⁶ (the Authority). It has concurrent powers with the Director General of Fair Trading under the Competition Act 1998 in relation to activities in the gas and electricity sectors.
- 2.15 Under the Competition Act 1998 there are two prohibitions against anti-competitive behaviour, Chapter I and Chapter II.

Chapter I

- 2.16 Chapter I prohibits certain agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade within the United Kingdom and have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom.
- 2.17 Some examples of behaviour that might breach this prohibition include price fixing, limiting output, collusion over market shares, discrimination, and the inclusion of unrelated supplementary provisions in contracts.

⁴ In the average ex-PES region, 32% of customers are no longer with the ex-PES supplier.

⁵ Sectoral regulators powers under the Competition Act are discussed more fully in "Concurrent Application to Regulated Industries", OFT 405, Office of Fair Trading March 1999. Discussion of the application of the Competition Act in the electricity sector can be found in "The application in the Energy Sector", OFT 428, Office of Fair Trading/Ofgem, March 2001.

⁶ The terms Ofgem and the Authority are used interchangeably in this document.

Chapter II

2.18 Chapter II prohibits any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market which may affect trade within the United Kingdom. Examples of behaviour that might breach this prohibition include predatory pricing or behaviour, excessive pricing, limiting output, discrimination and requiring unrelated supplementary obligations. Being dominant is not of itself prohibited, so the focus is on how a company conducts itself.

2.19 The form of potential breaches is not limited by the Act. We have identified some forms of behaviour which seem particularly relevant to discussion of how competition law could be an effective substitute for restrictions on self-supply; these include:

- ◆ predatory pricing and behaviour. Where the dominant company seeks to price below cost in the short term to weaken severely or eliminate competitors, with the intention of raising prices later to recoup the short term losses;
- ◆ discriminatory pricing. Price discrimination is an abuse where a dominant company applies dissimilar conditions to equivalent transactions with other trading parties. The most direct form is where different prices are charged to sets of customers with no cost justification. Price discrimination raises two potential issues: either excluding potential competitors from a market or charging excessively high prices to certain customers;
- ◆ excessive pricing. To be excessive, pricing should be "...higher than would normally be the case in a competitive market"⁷. (It should be noted, however, that few successful excessive pricing cases have been brought under European competition law); and
- ◆ restricting output. A company might withhold output with the intention of increasing prices. The withholding of output could be for a relatively

⁷ "The Chapter II Prohibition", OFT402, Office of Fair Trading, October 1999

short period, e.g., when supply and demand are tight, but have a very large effect because of inelastic supply and demand over short periods of time.

Process of investigation

- 2.20 In order to commence an investigation under the Competition Act Ofgem must have reasonable grounds for suspecting that one of the prohibitions has been breached. This suspicion may be the result of complaints, or it may derive from Ofgem's own market surveillance or knowledge acquired.
- 2.21 Following the investigation and if it is decided that there has been an infringement of either prohibition, such written directions may be given to the company as are appropriate to bring the infringement to an end. These directions can require modification or cessation of the offending conduct. In an urgent situation before an investigation has been concluded written notice may also be given of interim measures to prevent the suspected infringement.
- 2.22 At the conclusion of the investigation, if Ofgem propose to make a decision that there has been an infringement of a prohibition, written notice must be given to those likely to be affected, and they must be afforded the opportunity to make representations. If a company is found to have infringed either of the prohibitions under the Competition Act 1998 the Authority has the ability to impose a financial penalty on the company.

3. Review of justification for the self-supply restriction

- 3.1 This chapter assesses the arguments for keeping the self-supply restriction, as Ofgem understands them, and describes Ofgem's reasons for preferring to remove the restriction.

Arguments for retaining the restriction

- 3.2 Generally arguments for retaining the restriction are based upon analysis that some or all vertically integrated suppliers possess market power. There are two variants of the argument:
- ◆ that a vertically integrated supplier has market power in a generation market (usually defined as the England and Wales market); or
 - ◆ that vertically integrated suppliers have power in an electricity supply market (usually defined on an ex-PES regional, rather than a national, basis).

Arguments based on generation market power

- 3.3 Some representations to Ofgem suggested that the restriction must remain in order to prevent ex-PES suppliers striking new contracts with affiliated generators through which liquidity in the wholesale contracts markets may be reduced. If market liquidity were reduced too much, an ex-PES supplier could act as a price setter and drive up costs for its competitors. The vertically integrated ex-PES supplier in this scenario would lose little through this behaviour, as it would capture the higher margins from generation through its generation affiliate.
- 3.4 There were greater concerns about liquidity prior to the divestment of substantial amounts of generation capacity by Powergen and National Power during the 1990s. 21,709 MW of capacity was divested, and there are now 32 licensees active in the GB generation market. Electricity also enters the England and Wales market through interconnectors from France and Scotland.

- 3.5 In August 2001, Ofgem published a review of the first three months of NETA.⁸ Ofgem will be publishing a review of the first year of NETA later this summer.
- 3.6 Between April 2000 and March 2001 (pre-NETA) there were 8,445 reported OTC trades accounting for 279.94 GW of volume across 138 contract types. In the period April 2001 to March 2002 (post-NETA) there were 26,755 reported OTC trades accounting for 962.31 GW of volume across 341 contract types. There will have been many more unreported trades and trades through the exchanges.
- 3.7 These changes in market conditions mean any supplier which adopts a policy of buying from “preferred” sources (i.e., buying above the market clearing price) is unlikely to be able to reduce liquidity such that it has a material effect on prices. Therefore, such buying practices would be an expensive strategy if applied on a large scale. This is true whether the generator and supplier belong to the same corporate group, or are merely linked by a long-term contract. (Such a strategy only makes sense if the supplier were able to pass these costs to customers as an exercise of power in a retail market – a scenario addressed in paragraphs 3.9-3.11.)
- 3.8 Accordingly, Ofgem’s initial view is that the GB generation market is currently sufficiently competitive that permitting unrestricted self-supply would be unlikely to lead to reductions in liquidity sufficient to distort competition.⁹

Arguments based on retail market power

- 3.9 As identified above, the restriction was initially intended to mitigate the effect of market power in the retail market. Vertically integrated generators and suppliers could buy electricity from within their group, even when it was not the cheapest available, knowing that they could pass these extra costs on to retail customers. This was possible before the advent of domestic competition because customers

⁸ “The New Electricity Trading Arrangements, A review of the first three months”, Ofgem, August 2001.

⁹ This is not to say that there is no danger of such reductions in liquidity. Ofgem remains concerned about the danger of market abuse by holders of unusually flexible generating sets. Where demand for power or balancing services is rising rapidly, the market within a particular half-hour may be illiquid with only the unusually flexible able to meet demand, so these generators have power to increase price during that half-hour. However, this issue is not obviously linked to the self-supply restriction, except by the suggestion that where a particular generating set has the ability to create super-normal returns, the vertically integrated player which owns it would be unwise to lock up its capacity in contracts within the group.

were unable to switch away; and immediately after, because ex-PES suppliers' retail market power was such that they were able to sustain above-cost pricing without customers switching to other suppliers in large numbers.

- 3.10 Ofgem has received representations that competitive conditions in retail supply mean market power is still strong in certain areas, and likely to remain so. The argument runs that a large number of in-area ex-PES supplier customers are unwilling to switch suppliers, because of "switching costs", "loyalty", or other factors, and are likely to remain so. This would create a long-term rigidity in the market, which would allow the vertically integrated supplier to charge above-cost retail prices. The high in-area prices would create a revenue stream available for cross-subsidy into other markets. The cross-subsidy might distort the generation market: an uneconomic generation set could remain on stream by selling its power to the supplier for the benefit of these customers. Alternatively, the distortion could be in other supply markets: for electricity supply to customers elsewhere in the country, or for supply of gas as well as electricity.
- 3.11 The crucial assumption is that the rigidity exists, and will persist. Ofgem's 2001 review of domestic electricity supply competition¹⁰ found that there were few barriers to entry, and that customers were continuing to switch away from the incumbent supplier at rates of 55,000 per week. Competitors have, so far, been successful at taking away the incumbent's customers: in the average ex-PES region, 32% of customers are now with a supplier other than the incumbent. Moreover, there is a strong correlation between the size of the mark up between the incumbent's prices and its competitors' and the rate of customers' switching away from the incumbent. Typically a customer can save 8-18% by switching away from their former incumbent PES.

Distributed generation, independent generation and suppliers

- 3.12 Arguably a greater concentration of the supply market gives suppliers an advantage over the relatively fragmented generator sector, and that this has

¹⁰ "Review of domestic gas and electricity competition and supply price regulation – Evidence and initial proposals" Ofgem, November 2001 and "Experience of the competitive domestic electricity and gas markets – Research study conducted for Ofgem by MORI" Ofgem, November 2001

made it difficult for smaller generators, in particular distributed generators,¹¹ to secure export sales. The fear is that ending restrictions on self-supply could aggravate this situation.

3.13 However, Ofgem believes that difficulties faced by distributed generators relate to the inherent difficulties of small generators in persuading large buyers to incur transaction costs to deal with them; and, perhaps, to a paucity of demand within a Grid Supply Point Group (GSPG) in a particular half-hour. Ofgem notes, for example, concerns that distributed generators may be failing to obtain “embedded benefits”¹². Ofgem is committed to taking forward with DTI work to understand this issue better.

3.14 However, the factors material to the existence of restrictions on self-supply, as described in paragraphs 3.3-3.11 above, relate to market liquidity or rigidities in markets which would likely be wider defined than the GSPG and half-hour specific interpretation requires. It therefore seems unlikely that continuing restrictions on self-supply would make much difference to whether suppliers are willing to purchase from smaller generators.

Reasons for ending restrictions on self-supply

3.15 Ofgem believes that given the development of competition in the generation and supply activities (described above), and its powers under general competition law, it is no longer necessary or appropriate to retain the self supply restriction. In addition, Ofgem sees a number of significant disadvantages to the retention of the restriction, which have influenced our preference to remove it.

Discriminatory effect

3.16 Ofgem notes that some electricity suppliers with generation affiliates do not have a restriction on self-supply licence condition. As described in paragraphs 2.3-2.5 above, the restriction has been inserted over time as a response to mergers, and suppliers who have not participated in such a merger did not have

¹¹ Distributed generators are generators connected at low voltage within local distribution systems as opposed to being connected to the National Grid.

¹² Where the output from embedded generators does not pass over the national grid, it is not subject to transmission charges, losses and other transmission system operation costs. Avoidance of these costs is referred to as ‘embedded benefit’.

the restriction included in the licence brought in on 1 October 2001. British Gas Trading, which now has the largest share of domestic electricity customers in Great Britain, and has a number of generation affiliates, does not have a restriction on self-supply licence condition. In June 2001 Ofgem discussed the concept of a restriction on own generation for British Gas Trading and decided that such a condition was not necessary¹³.

- 3.17 Ofgem believes that continuing the restriction on self-supply for some ex-PES suppliers, but not others, could place those subject to the restriction at a competitive disadvantage. This would introduce a distortion in the electricity supply sector.

Disproportionate requirements for future enforcement

- 3.18 As noted in paragraphs 2.11-2.13 above, there are significant practical obstacles to current and future enforcement of a self-supply restriction.
- 3.19 Ofgem understands that in general suppliers purchase wholesale electricity on a 'single portfolio' basis, i.e. for all their supply businesses together and not for each area separately. Enforcement of the restriction would require rules apportioning the generation purchased to particular customers in particular areas. These rules are likely either to appear arbitrary and spurious; or to require very heavy-handed regulatory intervention – for example, so as to require "ring-fencing" of electricity for in-area customers. Such restrictions would be likely to create significant costs, by removing economies of scale currently enjoyed by ex-PES suppliers. These costs would be likely to be borne by customers.
- 3.20 In addition, the OTC market does not of itself create transparency about the contracts signed within it, and Ofgem does not routinely collect and analyse the enormous quantity of information this would represent. Requiring the systematic provision of contract information to Ofgem would be a significant new regulatory burden, and would have significant cost and resource implications for Ofgem.

¹³ "Centrica and Totalfinael's completed acquisition of Humber Power Limited – A consultation paper" Ofgem, June 2001.

- 3.21 Therefore Ofgem's initial view is that if the restriction on self-supply is retained, we would need to implement further restrictions to enhance the enforcement mechanism.
- 3.22 In making the case for Ofgem retaining the restriction and promoting additional licence conditions to make it enforceable, respondents should bear in mind that Ofgem does not have *vires* to mandate such additional licence conditions. These new conditions would need the consent of the licensees, and it is far from clear that this consent would be forthcoming. Failing consent, Ofgem would need to refer the matter to the Competition Commission, who in turn would not necessarily support the case for these additional rules.
- 3.23 Finally, we believe that collecting and analysing this information would be a largely futile exercise. We believe that if market conditions allowed the anti-competitive behaviour described in paragraphs 3.3-3.11, a self-supply restriction would not prevent it. Suppliers who wished to engage in such behaviour could do so through creating "pseudo-integrated" relationships with generators by means of long-term contracts. Suppliers would also be able to self-supply to all their businesses other than in-area domestic customers. Conversely, integrated generators/suppliers who wished to self-supply without breaching the condition could do so by buying and selling the power through a power exchange. This leads us to the conclusion that, were the risk of the anti-competitive behaviour described to become more serious, it would be better addressed using Ofgem's powers under general competition law as described in paragraphs 2.14-2.22 than through a restriction on self-supply.

4. Way forward and consultation

Ofgem's preferred approach

- 4.1 Ofgem does not believe the self-supply restriction currently in place is justified by market conditions, or is practically enforceable. The restriction creates costs and distorts the supply market, without good reason. Therefore Ofgem's preference is to remove the restriction.

Consultation

- 4.2 Ofgem is seeking views on the following questions:
- 4.3 Do respondents agree that all the arguments in chapter 3 for retention or removal of the restriction are relevant? Are there other relevant arguments Ofgem should consider?
- 4.4 Do respondents agree with the factual assessment Ofgem has used to evaluate these arguments? Are there other relevant facts?
- 4.5 In particular, can respondents assist Ofgem in quantifying the advantages and disadvantages of the restriction?
- 4.6 Do respondents agree with Ofgem's analysis of the non-enforceability of the restriction? If not, how do respondents suggest the restriction should be enforced?
- 4.7 Do respondents agree with Ofgem that Ofgem's concurrent powers under the Competition Act 1998 are a better way than retention of the licence condition to address the competition concerns described in this document, to the extent that they remained valid concerns?
- 4.8 Are there other relevant factors?

Process

- 4.9 If, in the light of the responses, Ofgem decides to proceed to remove the self-supply restriction, the process for effecting the change will include a 28-day

consultation period. For the avoidance of doubt, that period is in addition to time allowed for this consultation.

- 4.10 Undertakings have been given to Ofgem by other ex-PES supply businesses following merger activity in relation to the insertion of a self supply restriction in their licences. If the restriction is switched off in those licences where it presently exists these undertakings will cease to have effect.

Appendix 1 Licensees with restrictions on self-supply conditions.

1.1 Table 1 sets out the licensees which have a restriction on self-supply in their licence and the areas in which that condition applies.

Table 1

Special Condition	Licensee	Supply Services Area in which the condition applies
G	Enizade Ltd	Midlands
G	London Electricity plc.	London
G	Northern Electric and Gas 2 Ltd	Northern
G	Npower Ltd	Midlands
G	Npower Northern Ltd	Northern
G	Npower Yorkshire Ltd	Yorkshire
G	Npower Yorkshire Supply Ltd	Yorkshire
G	Powergen Retail Ltd	East Midlands
L	Scottish Power Energy Retail Ltd	Manweb
G	South Wales Electricity plc.	Swalec
M S	SSE Energy Supply Ltd	Southern Swalec
G	Sweb Ltd	Sweb
M	TXU UK Ltd	Eastern

Appendix 2 The restriction on self-supply licence condition.

- 2.1 The restriction on self-supply condition listed below is the same as that in the ex-PES suppliers supply licences with the terms in brackets substituted for the corresponding names and condition letters.

Special Condition - Restriction on Self Supply

1. The licensee shall not at any time after this Condition comes into effect:
 - (a) enter into any new electricity purchase contract or other equivalent agreement or arrangement (directly or indirectly) with an electricity generator which is an affiliate or a related undertaking of the licensee for the benefit of that part of the licensee's business which comprises the supply of electricity to former designated customers within the supply services area specified in Schedule 3; or
 - (b) make or permit (without the prior consent of the Authority) any material variation of any electricity purchase contract or other equivalent agreement or arrangement entered into for the benefit of that part of the licensee's business referred to in paragraph 1(a) to which an affiliate or a related undertaking of the licensee is a party.
2. For the purpose of this Condition:
"former designated customer" means a customer who would have fallen within the definition of "designated customer" (as defined in the public electricity supply licence previously granted to [the relevant ex-PES] in the form of that licence in force on 27 September 2001) and who is supplied by the licensee.
3. Subject to paragraph 4, the Authority may in writing direct that this Condition shall cease to have effect in this licence on:
 - (a) the date on which any of [the price control special conditions¹⁴] is first modified by the Authority; or
 - (b) any date thereafter which is specified in a direction given by the Authority to the licensee for the purpose of this paragraph.
4. The Authority may not give a direction under paragraph 3 unless it has first:
 - (a) given not less than 28 days notice of its intention to give the direction in such a manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by it;
 - (b) sent a copy of such notice to the licensee, all other licensed suppliers, and the Consumer Council; and
 - (c) duly considered all objections or representations received by the Authority after the date of publication of the notice which are not withdrawn.

¹⁴ These are the conditions with various letterings (typically Special Conditions B-F in most licences) that restrict charges to formerly designated customers. These conditions are:

- ◆ Restraints on Supply Charges
- ◆ Information to be provided to the Authority in connection with the charge restriction conditions
- ◆ Allowance in respect of security costs
- ◆ Duration of charge restriction conditions