

British Gas Trading Limited v Gas and Electricity Markets Authority: decision on permission to appeal

1. Under cover of a Notice of Appeal received by the Competition and Markets Authority (CMA) on 2 March 2015, British Gas Trading Limited (BGTL) sought permission to bring an appeal under section 11C of the Electricity Act 1989 (the Act) against the decision of the Gas and Electricity Markets Authority (GEMA) to modify the electricity distribution licences of a number of distribution network operators (DNOs) ('the Decision').
2. The Decision was taken under section 11A of the Act and appears in a document entitled *RIO-ED1 modifications to amend the special conditions of the electricity distribution licence held by the above named licensees and reasons for the decision pursuant to section 11A and 49A of the Electricity Act 1989*, published on 3 February 2015.

Requirement for permission to appeal

3. Under section 11C(3) of the Act, the CMA's permission is required before such an appeal may be brought.
4. I make this decision on permission to appeal in my capacity as an authorised member of the CMA (see Schedule 5A(1)(8) of the Act).
5. In making this decision I have had regard to BGT's Notice of Appeal, as well as to the submissions in response made by GEMA on 16 March 2015, and to a further letter of 18 March 2015 from BGT's solicitors, Towerhouse LLP. In addition, I have considered the written submissions made by Scottish Hydro Electric Power Distribution plc and Southern Electric Power Distribution plc (SSE), dated 13 March 2015 and by Citizens Advice Bureau, dated 24 March 2015.

Decision on permission

6. BGT's Notice of Appeal was received by the CMA within the period prescribed by paragraph 1(3) of Schedule 5A to the Act.
7. Under section 11C(4) of the Act, the CMA may refuse permission to bring an appeal only on one of a number of specified grounds. The potentially relevant grounds in the present case are as follows:

- (a) In relation to an appeal brought by a person falling with section 11C(2)(b) of the Act, that the interests of the person are not materially affected by the decision.
- (b) In relation to any appeal, (i) that the appeal is brought for reasons that are trivial or vexatious, or (ii) that the appeal has no reasonable prospects of success.
8. As to (a), BGT relies on section 11C(2)(b) of the Act as the basis for its standing to bring its appeal. This section allows 'any other person who holds a licence of any type under section 6(1) [of the Act] whose interests are materially affected by the decision' to appeal against a decision of GEMA under 11A of the Act. There is no doubt that BGT holds a licence under section 6(1) of the Act. Specifically it holds a 'supply licence' within the meaning of section 6(1)(d) of the Act.
9. I am satisfied that BGT's interests are materially affected by GEMA's decision. I note that BGT's Notice of Appeal does not set out the precise effect which GEMA's decision has on its interests. However, I consider, in light of the more detailed explanation set out in paragraph 6 of the further letter from BGT's solicitors dated 18 March 2015, that BGT's interests are materially affected by the Decision. In reaching that conclusion, I have taken into account the arguments advanced by SSE in their written submissions of 13 March 2015.
10. It is nevertheless plainly desirable that parties relying on section 11C(2)(b) of the Act in seeking permission to appeal against GEMA's decisions under section 11A of the Act should provide a detailed explanation as to why they consider that GEMA's decision materially affects their interests.
11. As to (b), I am satisfied that BGT's appeal is not brought for reasons that are trivial or vexatious. Further, I am unable to conclude that BGT's appeal has no reasonable prospect of success in relation to the first five grounds of appeal referred to in its Notice of Appeal.
12. As to the sixth ground of appeal referred to in BGT's Notice of Appeal, in my view, BGT's appeal does not have reasonable prospects of success to the extent that it constitutes a general complaint as to alleged procedural defects in GEMA's decision-making process. However, this ground of appeal does contain certain specific complaints, essentially based on lack of transparency or failure to give adequate reasons, which relate to the elements of the Decision which are the subject of the first five grounds of appeal set out in BGT's Notice of Appeal. I have accordingly considered whether to make the grant of permission to appeal subject to a condition limiting the matters that are to be considered on appeal. I am entitled to impose such conditions by

virtue of paragraph 1(11)(a) of schedule 5A to the Act. The condition that I impose is that the CMA's consideration of BGT's sixth ground of appeal shall be limited to a consideration of the matters identified in paragraph 4.128 of BGT's Notice of Appeal insofar as they relate to the complaints in the first five grounds of BGT's appeal.

13. I accordingly grant permission to BGT, subject to the condition set out in paragraph 12 above, to bring the appeal set out in its Notice of Appeal, pursuant to section 11C and paragraph 1 of Schedule 5A to the Act.

John Wotton
CMA Inquiry Chair
30 March 2015