

Gavan Walsh
NIE Networks
120 Malone Road
Belfast,
BT9 5HT

15 March 2022

Ref: NET/E/JF/482

Dear Gavan

RE: NIE Networks Condition 12 request for Provision of providing TIBCO IT Services to ESB Networks

Thank you for your letter to Tanya Hedley dated 14 January 2022 (**“the Letter”**) and subsequent letter received 04 March 2022 which –

- (a) outlines Northern Ireland Electricity Networks Limited's (**“NIE Networks”**) proposals for providing certain services (**TIBCO IT Services**) to ESB Networks DAC (**ESBN**); and
- (b) requests the Utility Regulator (**UR**¹)'s consent, under Condition 12(3)(d)(ii),(iii) and (iv) of the electricity distribution licence held by NIE Networks (the **Licence**), for ESBN to use and have access to such systems, equipment, facilities and property of, and the services of persons engaged by, NIE Networks' Distribution Business (the **Distribution Business**²) as are also used and accessed by the Distribution Business in its provision of the TIBCO IT Services to ESBN.

Definition of “TIBCO IT Services”

For the purposes of this letter, all references to 'TIBCO IT Services' are to those services which NIE Networks is to provide to ESBN pursuant to an agreement to be entered into between NIE Networks and ESBN and which fall within the definition of Services in Clause 1.1. of the *“TIBCO Services Agreement Final”* document as provided by NIE Networks to the Utility Regulator on [04 March 2022] (the **Final Agreement**).

The Services are further described in Schedule 1 of the Final Agreement and categorised as:

¹ In this letter “we”, “UR” “us”, and “the Authority” are used interchangeably to refer to the Northern Ireland Authority for Utility Regulation.

² As that term is defined in the Licence.

- Service Management Services
- Applications Support and Development Services
- Infrastructure Provision Services
- Telecoms Provision Services (including Internet services)

Contract Duration

The period for which NIE Networks is to provide the TIBCO IT Services to ESNB is defined within clause 3.1 of the Final Agreement, namely 1 April 2022 to 31 March 2025 (unless the agreement is terminated early in accordance with its terms).

Distribution Licence Conditions - Consent Request

NIE Networks seeks the UR's consent, pursuant to the provisions of paragraphs 3(d)(ii), (iii) and (iv) of Condition 12 (Independence of the Distribution Business) of the Licence, for NIE Networks to be able to grant use and access to ESNB of the systems, equipment, facilities, property of, and the services of persons engaged by NIE Networks Distribution Business, as are also used and accessed by the Distribution Business in its provision of the TIBCO IT Services to ESNB.

Paragraphs 3(d)(ii), (iii) and (iv) of Condition 12 read as follows –

"3. *The Licensee shall ensure that:*

(a) ...

(b) ...

(c) ...

(d) Any Associated Business does not use or have access to:

(i)...

(ii) Systems for the recording, processing or storage of data to which persons engaged in the management or operation of the Distribution Business also have access (save to the extent the Authority consents to such use or access);

(iii) Equipment, facilities or property employed for the management or operation of the Distribution Business (save to the extent the Authority consents to such use or access); and

(iv) The services of persons who are (whether or not as their principal occupation) engaged in the management or operation of the Distribution Business (save to the extent the Authority consents to such use or access);"

Other Licence Conditions Considered by the UR

In considering NIE Networks' proposals and request for consent, the UR has also sought clarification from NIE Networks as to matters relating to, and NIE Networks' confirmation of its compliance with, the provisions of paragraph 6 of Condition 12 and paragraphs 10(d) and (e) of Condition 14 (Ring Fencing), of the Licence.

NIE Networks provided clarification (as set out below in red font) on 18 January 2022. We have no further concerns on the basis of the information provided by NIE Networks.

Condition 12 - paragraph 6

This provides that "the Licensee shall not, save with the written consent of the Authority, enter (directly or indirectly) into any agreement or arrangement with a holding company at a time when:

- (a) An undertaking complying with paragraph 4 is not in place in relation to that holding company; or
NIEN Response: "Does not apply as the undertaking referred to in paragraph 4 is in place."
- (b) There is an unremedied breach of such undertaking; or
NIEN Response: "Does not apply as there is no unremedied breach of the undertaking."
- (c) The Licensee is in breach of the terms of any direction issued by the Authority under paragraph 5. "
NIEN Response: "Does not apply as there is no breach of any terms in any direction issued under paragraph 5."

Condition 14 – paragraphs (10)(d) and (e)

These provide that "nothing in Condition 14 shall prevent:

- (d) the Licensee from carrying on any business or conducting any activity otherwise prohibited by paragraph 7 above to which the Authority has given its consent in writing; or

NIEN Response: "The operation of the Tibco system on behalf of NIE Networks is definitely core business; but NIE accept that the provision of services to ESB in respect of the operation of its Tibco system is arguably not. However, NIE are satisfied that the requirements of LC14 are still being met since NIE Networks carries out very few non-core activities, and therefore the provisions of LC14(10)(e) apply."

- (e) the Licensee from carrying on any business or conducting any activity other than a core business provided that the aggregate turnover of all such other businesses or activities does not in any financial year exceed 5% of the aggregate turnover of the core businesses (excluding the turnover on transactions which the core businesses make with each other) in the immediately preceding financial year."

NIEN Response: We remain compliant with LC14 since our aggregate turnover from all non-core activities does not exceed 5% of aggregate turnover of the core business. This will continue to be the case even if/when we start receiving future income from ESB for the provision of Tibco services.

Utility Regulator's Considerations

It is a requirement for NIE Networks to obtain consent from the UR before it can give any Associated Business, including thereby ESBN, use or access to systems, equipment, facilities, property, and/or services of personnel which are also used or accessed by the Distribution Business.

Whilst consent in regards to Licence Conditions 12(6) and 14(10)(d)(e) is not being sought by NIE Networks, both Licence Conditions were reviewed as part of our analysis, as they include certain provisions and/or obligations which could potentially apply to NIE Networks' proposals to provide TIBCO IT Services to ESBN.

We recognise that work is underway between NIE Networks and ESB Networks for the relocation of ROI TIBCO Services and environments to a data centre located within ROI that shall be controlled by ESB Networks, where only the ROI Environments will be relocated. NIE Networks provided clarification regarding NIE Networks resources roles and responsibilities including future access to NIE Networks systems upon completion of the ROI Hub relocation. The responses have been taken into our consideration for the requested consent.

Consent has only been considered in respect of ESBN using and/or having access to those systems, equipment, facilities, property, and/or services of personnel which are also used or accessed by the Distribution Business in the provision of the TIBCO IT Services (as set out in the Final Agreement).

Consent has only been considered for the period defined in Clause 3.1 of the Final Agreement, namely 1 April 2022 to 31 March 2025.

Utility Regulator's Decision

We have given due consideration to the request for consent and in our analysis found that the new arrangements proposed between NIE Networks and ESBN, in respect of the provision of TIBCO IT Services by NIE Networks to ESB, do not compromise NIE Networks management or operation of the Distribution Business. We are of the view that NIE Networks has mitigated any access risks to the Distribution Business by implementing strict access policies for service desks, third parties and outsourced teams on their IT Infrastructure for which the ESB TIBCO environments will be accessed by ESB Networks.

Accordingly, under and in accordance with the provisions of Condition 12(3)(d)(ii), (iii) and (iv), the UR gives its consent to NIE Networks to enable ESBN to use and have access to -

- (i) systems for the recording, processing or storage of data to which persons engaged in the management or operation of the Distribution Business also have use and/or access in the course of providing TIBCO IT Services to ESBN;
- (ii) equipment, facilities or property employed for the management or operation of the Distribution Business in the course of providing TIBCO IT Services to ESBN; and
- (iii) the services of persons who are (whether or not as their principal occupation) engaged in the management or operation of the Distribution Business in the course of providing TIBCO IT Services to ESBN.

The above consent is subject to the following conditions –

- 1 The consent applies only where NIE Networks has on or before 1 April 2022 entered into an agreement with ESBN (on the exact same terms as proposed in the Final Agreement) to provide TIBCO IT Services to ESBN.
- 2 The consent applies only for the purposes of ESBN being able to use and have access to such systems, equipment, facilities and property of, and the services of persons

engaged by, the Distribution Business to which the Distribution Business has use or access in the course of providing the TIBCO IT Services to ESNB.

- 3 The maximum period for which the consent applies is the period 1 April 2022 to 31 March 2025.
- 4 Where the agreement entered into between NIE Networks and ESNB pursuant to paragraph 1 above terminates prior to 31 March 2025, the consent expires on the date of the termination of that agreement and NIE Networks shall inform the UR immediately of any termination of the agreement.
- 5 NIE Networks shall maintain an accurate and up to date record of all ESNB personnel that have use of and/or access to the systems, equipment, facilities and property of, and the serves of persons engaged by, the Distribution Business in providing the TIBCO IT Services.

Please note that NIE Networks will be required to request, in good time, further or additional consent if:

- There are, or are to be, any changes to the definition of TIBCO IT Services (as defined in this Letter) at any time during the period for which the consent is given.
- The TIBCO IT Services are required by ESNB and proposed to be provided by NIE Networks for any date on or 31 March 2025.

We trust the above is clear and helpful but if you have any queries relating to the content of this letter, please contact Jody.OBoyle@uregni.gov.uk

Yours sincerely,



John French
Chief Executive