

Joint Position of Ofgem (Great Britain) and The Authority for Consumers & Markets (the Netherlands) on BritNed Development Limited's 10-Year Review Report

This document sets out the joint position of the National Regulatory Authorities (NRAs) in the Netherlands and Great Britain (GB) following the NRAs' review of the 10-year Financial Report submitted by BritNed Development Limited (BDL) with respect to the BritNed interconnector (BritNed). The concerned NRA in the Netherlands is the Authority for Consumers & Markets (ACM), and the concerned NRA in GB is the Office of Gas and Electricity Markets ("Ofgem").

Background

BritNed is a 1,000MW direct current cable connecting the Dutch and GB transmission systems between Maasvlakte in the Netherlands and the Isle of Grain in GB. BDL is a joint venture of Dutch NLink International B.V. (a subsidiary of TenneT Holding B.V.¹) and National Grid Interconnector Holdings Ltd. BDL commercially operates the BritNed interconnector.

Exemption and amendment

In 2007, BDL was granted an exemption from the provisions of Article 6(6) of Regulation (EC) No 1228/2003 (the "Regulation")², for a period of 25 years from the date on which the BritNed interconnector commences commercial operation.

In accordance with Article 7(5) of the Regulation, the European Commission requested that Ofgem and ACM amend the exemption order issued to BritNed to include the following conditions:

- "(a) BritNed has to present to the national regulators within ten years after start of operations (as defined in the exemption decisions) a report that contains all the details necessary to scrutinise the total costs and revenues of the project and the rate of return on the investment with 2007 as the base year allowing for comparison with the data provided for the exemption request.*
- (b) If, calculated on the basis of the first 10 years, the estimated internal rate of return for the entire project is more than one percentage point above the internal rate of return estimated when filing the exemption request, BritNed shall have two options:*
 - (i) it shall either increase the interconnector capacity to such an extent that the initially estimated rate of return is met. The additional capacity would not automatically be covered by the scope of the present exemption; or*
 - (ii) alternatively, BritNed shall accept that the profits (discounted to 2007 figures) exceeding the initially estimated rate of return by more than one percentage point*

¹ TenneT Holding B.V. is the holding company of Dutch TenneT TSO B.V.

² This Regulation (that formed part of the EU Second Energy Package) was then replaced by Regulation (EC) No 714/2009 (that formed part of the EU Third Energy Package), which was subsequently replaced by Regulation (EU) 2019/943 (that is still in force and forms part of the EU Clean Energy Package).

are capped and used, at equal parts, to finance the regulated asset base in the UK and in the Netherlands.”

From 31 January 2020, the UK is no longer part of the European Union. As of 1 January 2021, following the transition period provided in the Brexit withdrawal agreement³, Article 309 of the Trade and Co-operation Agreement between the UK and the EU⁴ ensures that existing exemptions for interconnectors will continue to apply in accordance with the laws of their respective jurisdictions and the terms applicable.

Process

Preliminary to the official submission, BDL organised a workshop regarding the revenue study conducted by an external consultant, Baringa. This workshop was held on 10 June 2021. In this session Baringa explained the revenue study.

The official submission was received by Ofgem and ACM on 22 July 2021. Upon receipt, both NRAs had some minor additional questions to clarify the report. These questions related to, among other things, some deviations from the initial CAPEX, especially regarding the additional costs of cable decommissioning. These questions were sent by email, dated 11 August 2021 and answers were received by email dated 27 August 2021. Regarding the cable decommissioning, it was noted that this cost was not included in BritNed’s original submission for exemption, however it has now been included in their financial report to reflect expected decommissioning obligations.

10-year review and revenues report submission

The Interconnector began operation in March 2011 and, in line with the conditions set out above, BDL has undertaken a 10-year review and submitted a financial report covering the full 25-year time horizon. This includes:

- a) the actual costs and revenues in the first 10 years of operation;
- b) a revised forecast of the costs and revenues for the subsequent 15 years;
- c) a revised forecast of the internal rate of return;
- d) a comparison of all the data used; and
- e) a statement in which BritNed demonstrates that it has taken account of all relevant material factors known to it in making any revised forecast.

³ “Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community”

⁴ “Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part” that entered into force on 1 May 2021 after its ratification (and following its provisional application between 1 January 2021 and 30 April 2021, after it was agreed in December 2020). Its EU reference is OJ L 149, 30.4.2021, p. 10–2539, and its UK reference is Treaty Series No.8 (2021).



Our view

Ofgem and ACM are satisfied that the financial report fulfils Condition A of the amendment to the exemption set by the European Commission. Furthermore, we are satisfied that, based on the result of the financial report, the criterion in Condition B (one percentage point above the submitted internal rate of return) is not triggered, and therefore the two options specified above at paragraph (b)(i) and (ii) are no longer relevant.