

## The Authority's decision and analysis on the application for certification as unbundled by Diamond Transmission Partners Hornsea Two Limited

This document explains the Authority's final decision on compliance by Diamond Transmission Partners Hornsea Two Ltd (**The Applicant**) with the requirements of the Electricity Act 1989 (the **Electricity Act**) for transmission system operators (**TSOs**) to unbundle from generation, production and supply.

### 1. Certification Decision

- 1.1. The Authority<sup>1</sup> concludes that the Applicant complies with the requirements of the ownership unbundling model as set out in GB legislation and should therefore be certified as ownership unbundled.

### 2. Legislation

- 2.1. In GB, the ownership unbundling requirements set out in the Electricity Directive have been transposed through the Electricity and Gas (Internal Markets) Regulations 2011 which inserted sections 10A to 10O into the Electricity Act 1989 (the **Electricity Act**).
- 2.2. The ownership unbundling requirements are set out in section 10A to 10O of the Electricity Act.<sup>2</sup> Section 10F of the Electricity Act – 'the ownership unbundling requirement' – states that "*the ownership unbundling requirement is met by an applicant for certification if in relation to each of the five tests ... – (a) the Authority thinks that it is passed, or (b) it is treated as passed by virtue of subsection (7), (9) or (9A)*". In accordance with subsection 10F(9A), where one or more of the tests is not passed, we may decide to treat such tests as passed if the Authority is satisfied that there is no risk of discrimination, and it would be appropriate and in line with our principal objective and general duties to do so.<sup>3</sup>

### 3. The Applicant

- 3.1. Diamond Transmission Partners, a consortium of Mitsubishi Corporation (**MC**) and HICL Infrastructure Plc (**HICL**) was announced as the preferred bidder for the Hornsea Two offshore transmission project on 2 September 2022. Diamond Transmission Partners Hornsea Two Limited is expected to become the licensed offshore transmission owner (**OFTO**) for the Hornsea Two offshore transmission system in the summer of 2023 and will be indirectly owned by MC and HICL.

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<sup>1</sup> The Gas and Electricity Markets Authority (the 'Authority'). In this document, the terms "Authority", "Ofgem", and "us" are used interchangeably.

<sup>2</sup> The amending regulations, the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019, as amended by The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2020, came into force on the IP completion day (as provided by Schedule 5, paragraph 1 of the European Union (Withdrawal Agreement) Act 2020)

<sup>3</sup> [Certification arrangements in Great Britain following amendments to the ownership unbundling provisions of the Gas Act 1986 and the Electricity Act 1989: End of the transition period | Ofgem](#)

#### 4. Summary of Ofgem analysis

- 4.1. *First test: The applicant (a) does not control a relevant producer or supplier; (b) does not have a majority shareholding in a relevant producer or supplier; and (c) will not, on or after the relevant date, exercise shareholder rights in relation to a relevant producer or supplier.*
- 4.2. The Applicant has confirmed that it does not hold shares in, nor control, any other company. Furthermore, the Applicant has provided a signed undertaking that, during the term of its electricity transmission licence, it will not exercise, or cause to be exercised on its behalf, any shareholder rights in relation to a relevant producer or supplier that it might acquire during the currency of the undertaking. Therefore, the Applicant meets the requirements of the first test.
- 4.3. *Second Test: Where the applicant is a company, partnership or other business, none of its senior officers has been, or may be, appointed by a person who (a) controls an electricity undertaking which is a relevant producer or supplier; or (b) has a majority shareholding in an electricity undertaking which is a relevant producer or supplier.*
- 4.4. The Applicant has provided details of the process for appointing directors. It meets the requirements of the second test as none of its senior officers has been, or may be, appointed by a company or a person who: (a) controls an electricity undertaking which is a relevant producer or supplier; or (b) has a majority shareholding in an electricity undertaking which is a relevant producer or supplier.
- 4.5. *Third Test: Where the applicant is a company, partnership or other business, none of its senior officers is also a senior officer of an electricity undertaking, which is a relevant producer or supplier.*
- 4.6. The information provided by the Applicant confirms that none of its directors is also a senior officer of an electricity undertaking which is a relevant producer or supplier. The Applicant therefore meets the requirement of the third test.
- 4.7. *Fourth and Fifth Tests: The applicant is not controlled by a person who (a) controls a relevant producer or supplier; or (b) has a majority shareholding in a relevant producer or supplier.*
- 4.8. The Applicant is ultimately controlled by Mitsubishi Corporation (**MC**) and Sun Life Financial Inc (**Sun Life**). The Applicant has provided a comprehensive account of the corporate structures of its controllers. MC and Sun Life hold interests in a number of participations in GB and the European Economic Area (**EEA**) which qualify as relevant producers or suppliers.

- 4.9. Section 10F(9)(A) of the Electricity Act provides that the Authority can use its discretion to treat one or more of the five tests as passed in certain circumstances. Further information on the factors that we consider particularly relevant in assessing the risk of discrimination and our ability to exercise discretion are detailed in our open letter.<sup>4</sup>
- 4.10. While the controllers do also control, and in some cases hold a majority shareholding in, relevant producers or suppliers, the Applicant has demonstrated to our satisfaction that it does not have a relationship with these relevant producers or suppliers that might lead the Applicant to discriminate in favour of those producers or suppliers. The Authority considers it appropriate to treat the fourth and fifth tests as passed in accordance with section 10F(9A) of the Electricity Act. The Applicant therefore meets the requirements of the fourth and fifth tests.

## **5. Controller from a Country outside the UK**

- 5.1. The Authority considers that two controllers of the Applicant are from a country outside the UK; MC is registered in Japan<sup>5</sup> and Sun Life is registered in Canada.<sup>6</sup> In its letter of 28 February 2023, the Department for Energy Security and Net Zero carrying out the Secretary of State's obligations under sections 10C(2) and (3) of the Electricity Act, concluded that the certification of the Applicant would not put at risk the security of electricity supplies in the United Kingdom or any other EEA state.

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<sup>4</sup> Link to [Certification arrangements in Great Britain following amendments to the ownership unbundling provisions of the Gas Act 1986 and the Electricity Act 1989: End of the transition period | Ofgem](#)

<sup>5</sup> Mitsubishi Corporation is listed on the Tokyo Stock Exchange.

<sup>6</sup> Sun Life Financial Inc. is a Canada-based financial services company registered on the Toronto Stock Exchange. Source: [Company Information - Sun Life Financial Services Canada \(hl.co.uk\)](#)