

The Authority's final decision and analysis on the application for certification as unbundled by Greenlink Interconnector Limited.

This document explains the Gas and Electricity Market Authority's (the **Authority**)¹ final decision on compliance by Greenlink Interconnector Limited (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 undertakings.

1. Certification Decision

- 1.1. The Authority² concludes that the Applicant complies with the requirements of the ownership unbundling model as set out in the Electricity Act and should therefore be certified as ownership unbundled.

2. Legislation

- 2.1. The ownership unbundling requirements are set out in sections 10A to 10O of the Electricity Act.³
- 2.2. Under section 10F of the Electricity Act "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)".
- 2.3. Under 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.⁴

¹ The Gas and Electricity Markets Authority is the regulator of gas and electricity markets in Great Britain. Ofgem is the Office of Gas and Electricity Markets, which supports the Authority in performing its statutory duties and functions. Whilst the terms "Ofgem", "the Authority", "we" and "our" are used interchangeably in this letter, it is the Authority which is responsible for exercising the relevant statutory powers.

² The Gas and Electricity Markets Authority (the 'Authority'). In this document, the terms "Authority", "Ofgem", and "us" are used interchangeably.

³ 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).

⁴ https://www.ofgem.gov.uk/sites/default/files/docs/2021/03/certification_open_letter_-_updated_guidance_-_2021_0.pdf

3. The Applicant

- 3.1. Greenlink Interconnector Limited is a private company limited by shares. Greenlink Interconnector Limited is a wholly owned subsidiary of Greenlink Interconnector Trading Limited, which in turn is a wholly owned subsidiary of Greenlink Interconnector Financing Limited, which in turn is a wholly owned subsidiary of Greenlink Interconnector Holdings Limited, which in turn is a wholly owned subsidiary of Greenlink Interconnector Group Holdings Limited, which in turn is wholly owned by Greenlink (Luxembourg) S.à.r.l, which is a majority owned subsidiary of Partners Group Holding AG (**Partners Group**). The Applicant is ultimately controlled by Partners Group.
- 3.2. The Applicant holds an electricity interconnector licence, granted on 9 February 2015 under section 6(1)(e) of the Electricity Act 1989.⁵ This licence authorises the Applicant (formerly Greenwire Transmission Pembroke Limited) to participate in the operation of the Greenlink interconnector between Great Britain (**GB**) (Pembroke substation, Wales) and a place within the jurisdiction of another country or territory, being the Republic of Ireland (Great Island substation, Wexford).
- 3.3. The Applicant therefore has the sole business focus of electricity interconnector operator, owning 100% of the Greenlink interconnector between GB and Ireland.

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 control, nor hold shares in, any other company. Furthermore, the Applicant has provided a signed undertaking⁶ in its application for certification, where it undertakes that it will not exercise, or cause to

⁵ <https://www.ofgem.gov.uk/publications/greenwire-transmission-pembroke-limited-notice-grant-electricity-interconnector-licence>

⁶ As per section 10F(3) of the Electricity Act

be exercised on its behalf, any shareholder rights in relation to a relevant producer or supplier (RPoS). 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. The right to appoint the directors for the Applicant sits with the Applicant's Board.
- 4.5. However, the appointment of senior officers of the Applicant can be influenced by Partners Group (their ultimate controller), according to information provided by the Applicant. Partners Group controls undertakings that are considered a RPoS in Europe, Asia, North America, South America, and Oceania. The applicant has confirmed that Partners Group does not currently own any RPoSs in the United Kingdom (**UK**) or Ireland.
- 4.6. In practice, Partners Group can determine the composition of the Applicant's board of directors, by virtue of internal governance arrangements within the corporate structure.
- 4.7. Section 10F(9A) of the Electricity Act provides that the Authority may use its discretion to treat one or more of the five tests as passed in certain circumstances. The Applicant has asked Ofgem to exercise its discretion under section 10F(9A) with respect to the second test. The Applicant has set out in their submission why they believe there is no risk of discrimination or conferring an unfair advantage arising as a result of Partner Group's ownership of both the Applicant and the companies that are considered as being RPoS or their assets.
- 4.8. The Applicant has demonstrated to our satisfaction that it does not have a relationship with an RPoS which might lead them to discriminate in favour of the RPoS. There appears to be no risk that Partners Group involvement could lead to discrimination on the part of the Applicant or Partners Group to benefit from generation interests in the jurisdictions in Europe, North America, South America, Asia or Oceania. Based on our assessment of the information provided by the Applicant, we consider that the generation interests in Asia, North America, South America, and Oceania, in which

Partners Group holds investments, do not give rise to a risk of discrimination or a conflict of interest, particularly due to their lack of geographical proximity to the Greenlink Interconnector. With respect to the generation interests that are considered RPoSs in Europe, the total generating capacity of the RPoSs located in Europe, in which Partners Group holds investments, is de minimis relative to the total European Union electricity generation (less than 0.1%).⁷

- 4.9. We consider that the directors of the Applicant are deterred from discriminating in favour of any RPoS undertakings that could give rise to a conflict of interest. This is due to the Commercially Sensitive Information (**CSI**) Exchange Protocol that the Applicant has implemented, which each director has signed, and any future director appointed by Partners Group will need to sign. Provided that is adhered to by the Applicant, the Protocol ensures that a strict level of compliance and confidentiality of CSI will be maintained by directors appointed by Partners Group, both in the present and the future.
- 4.10. The Applicant has provided information on the procedures in place and we deem these measures appropriate in dealing with potential breaches of the CSI Exchange Protocol. As such, we consider that the directors of the Applicant are deterred from discriminating in favour of any RPoS undertakings that could give rise to a conflict of interest. As a result, we are satisfied that Partners Group's influence in appointing directors does not pose a risk of discrimination. We are therefore satisfied that the Applicant does not have relationships with these RPoSs that might lead the Applicant to discriminate in favour of these RPoSs.
- 4.11. Section 10F(9A) of the Electricity Act provides that the Authority may use its discretion to treat one or more of the five tests as passed in certain circumstances.
- 4.12. Therefore, by applying the test contained in section 10F(9A) of the Electricity Act, the Authority considers it is appropriate to treat the second test as passed.

⁷ This calculation was performed against the total electricity generation in the EU in 2020. This value was 3,990,208GWh based on the 2022 data published from the International Energy Agency.

- 4.13. *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.*
- 4.14. The information provided by Partners Group confirms that three of the directors of the Applicant are also senior officers of electricity undertakings which are RPoSs. These RPoSs are sited in Europe. The applicant has confirmed that there are currently no directors of the Applicant that are directors of electricity undertakings which are RPoSs in the UK or Ireland. Based on our assessment of information provided by the Applicant, we consider that the directorships held by the senior officers of the Applicant do not give rise to a risk of discrimination or a conflict of interest.
- 4.15. We consider that the Applicant has implemented appropriate compliance arrangements, specifically at the directorship level. The Applicant has ensured that each director signs a letter of confirmation regarding compliance with their CSI Exchange Protocol. The Protocol aims to preserve the strict confidentiality of CSI and prevent from being disclosed any such information of a commercially advantageous nature to any undertaking performing any of the functions of generation or supply.
- 4.16. Furthermore, it aims to ensure that CSI obtained from third parties in the context of providing or negotiating access to GIL's interconnector is not used in the context of sales or purchases of electricity by related entities controlled by Partners Group. The Protocol places emphasis on the importance of its adherence with respect to directors of the Applicant who are also senior officers of any RPoSs. Day-to-day responsibility for operating the protocol and ensuring review and maintenance has been delegated to the Legal Director. With respect to compliance around restrictions in relation to the exchange of CSI, the Legal Director and Commercial director have this responsibility.
- 4.17. The Applicant has provided information on the procedures in place and we deem these measures appropriate in dealing with potential breaches of the CSI Exchange Protocol. As such, we consider that the directors of the Applicant are deterred from discriminating in favour of any RPoS undertakings that could give rise to a conflict of interest. We feel that this is the appropriate level of governance to enforce the Protocol effectively, and to ensure that the Applicant adheres to its standard licence conditions at all times, such that it will not discriminate.

- 4.18. With respect to the third test, provided that it is adhered to by the Applicant, we deem the Applicant's CSI Exchange adequate. Compliance with its provisions will ensure that the confidentiality of commercially sensitive information will be maintained by each director of the Applicant. Our view is that the Applicant has carefully considered how to best manage CSI and information that may provide commercial advantage to an RPoS and have implemented measures that we deem adequate to eliminate the potential transfer of such information.
- 4.19. In conjunction with the protocol, we are further satisfied that the de minimis generating capacity of the RPoSs in Europe relative to the total European Union electricity generation, in which three directors of the applicant are senior officers of, do not pose a risk of discrimination or a conflict of interest.
- 4.20. Section 10F(9A) of the Electricity Act provides that the Authority may use its discretion to treat one or more of the five tests as passed in certain circumstances.
- 4.21. Based on our assessment of information provided by the Applicant, we consider that the senior officers of the Applicant who are also senior officers of an electricity undertaking which is an RPoS do not give rise to a risk of discrimination or a conflict of interest.
- 4.22. Therefore, by applying the test contained in section 10F(9A) of the Electricity Act, the Authority considers it is appropriate to treat the third test as passed.
- 4.23. *Fourth Test: The applicant is not controlled by a person who controls a relevant producer or supplier.*
- 4.24. As set out in paragraph 3.1, the Applicant is controlled by Partners Group, who also controls RPoSs in Europe, Asia, North America, South America, and Oceania.
- 4.25. The Applicant has provided information on all companies in which Partners Group (the ultimate controller of the Applicant) has an interest. This shows that the Applicant is controlled by a person, Partners Group who control RPoSs located in Europe, Asia, North America, South America, and Oceania. The applicant has confirmed that Partners Group does not currently control any RPoSs in the UK or Ireland.
- 4.26. Section 10F(9A) of the Electricity Act provides that the Authority may use its discretion to treat one or more of the five tests as passed in certain circumstances.

- 4.27. Based on our assessment of information provided by the Applicant, we consider that the generation interests in Asia, North America, South America, and Oceania, in which Partners Group controls, do not give rise to a risk of discrimination or a conflict of interest, particularly due to their lack of geographical proximity to the Greenlink interconnector. With respect to the RPoSs located in Europe that Partners Group control, the total generating capacity of the RPoSs is de minimis relative to the total European Union electricity generation (less than 0.1%). As such, we are satisfied that this does not pose a risk of discrimination in favour of those RPoSs.
- 4.28. Therefore, by applying the test contained in section 10F(9A) of the Electricity Act, the Authority considers it is appropriate to treat the fourth test as passed.
- 4.29. *Fifth Test: The applicant is not controlled by a person who has a majority shareholding in a relevant producer or supplier.*
- 4.30. As set out in paragraph 3.1, the Applicant is controlled by Partners Group, who also controls RPoS in Europe, Asia, North America, South America, and Oceania.
- 4.31. The Applicant has provided information on all companies in which Partners Group (the ultimate controller of the Applicant) has an interest. This shows that the Applicant is controlled by a person, Partners Group who have a majority shareholding in RPoSs located in Europe, Asia, North America, South America, and Oceania. The applicant has confirmed that Partners Group does not currently have a majority shareholding in any RPoSs in the UK or Ireland.
- 4.32. Section 10F(9A) of the Electricity Act provides that the Authority may use its discretion to treat one or more of the five tests as passed in certain circumstances.
- 4.33. Based on our assessment of information provided by the Applicant, we consider that the generation interests in Asia, North America, South America, and Oceania, in which Partners Group holds investments and/or majority shareholding, do not give rise to a risk of discrimination or a conflict of interest, particularly due to their lack of geographical proximity to the Greenlink interconnector. With respect to the RPoSs located in Europe, the total generating capacity of the RPoSs located in Europe, in which Partners Group holds investments and/or majority shareholding, is de minimis relative to the total European Union electricity generation (less than 0.1%). As such, we are satisfied that this does not pose a risk of discrimination.

4.34. Therefore, by applying the test contained in section 10F(9A) of the Electricity Act, the Authority considers it is appropriate to treat the fifth test as passed.

5. Ongoing monitoring

- 5.1. The GB legal framework provides several measures to monitor our certification decision on an ongoing basis. The Authority has an obligation under section 10I, 10J and 10L of the Electricity Act to monitor and review whether a certified person should remain certified according to the process set out in the Electricity Act.
- 5.2. We require certified parties to inform the Authority of any significant changes that are relevant to our certification decisions promptly and to provide the Authority with an annual update. This would include any amendments to any supplementary documentation in support of this application, such as the CSI Exchange Protocol.
- 5.3. In compliance with the Electricity Act, we will continue to monitor whether the basis on which the Authority decided to certify the Applicant (the certification basis) continues to apply.

6. Controller from a country outside the United Kingdom

- 6.1. Partners Group is registered and incorporated in Switzerland. As Partners Group are from a country outside the United Kingdom, for the purposes of this certification assessment and as per section 10O of the Electricity Act, we notified the Secretary of State on 30 November 2022 in accordance with section 10B(3) of the Electricity Act. On 11 January 2023, the Secretary of State concluded that certifying the Applicant would not put the security of electricity supplies in the United Kingdom at risk.