

## Regulatory arrangements for the new Dutch-GB electricity interconnector

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**Target audience:** This document will be of interest to electricity generators, interconnector owners and operators, suppliers and other interested parties.

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### Overview:

1.1. BritNed Development Limited (BritNed) has applied for an electricity interconnector licence, authorising it to participate in the operation of the BritNed interconnector, with Standard Licence Conditions relative to regulated third party access and use of revenues (SLC 9, 10 and 11) suspended from operation. BritNed has also requested an exemption from Article 6(6) of Regulation (EC) No 1228/2003 (the Regulation) relative to the use of interconnector revenues.

1.2. This document sets out, for consultation, Ofgem's initial views on BritNed's application for an electricity interconnector licence with such an exemption being in place.

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## Context

The Authority has the ability to grant licences to electricity interconnector operators under the Electricity Act 1989. As part of this process, the Authority can exempt interconnector operators from having to offer terms for third party access and obtain regulatory approval for their charging methodologies and use of revenues.

On 13 June 2006, BritNed Development Limited ("BritNed"), a joint venture between National Grid International Limited ("NGIL") and NLink International B.V., applied to the Authority for an electricity interconnector licence and an exemption from the requirements outlined above.

Given that the interconnector will connect the transmission systems in Great Britain and the Netherlands, BritNed has also applied to the Dutch Ministry of Economic Affairs to obtain the relevant exemption under Dutch law.

This consultation document outlines the criteria that BritNed must satisfy in order for an exemption to be granted. The document outlines the views expressed by BritNed in its application against the relevant criteria and Ofgem's views in this respect. This consultation document seeks views from interested parties on Ofgem's initial views.

## Associated Documents

- LNG facilities and interconnectors, EU legislation and regulatory regime, DTI/Ofgem final views', DTI/Ofgem, November 2003.  
[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/5158\\_LNG\\_facilities\\_intercnters\\_EU\\_legis\\_reg\\_25nov03.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/5158_LNG_facilities_intercnters_EU_legis_reg_25nov03.pdf)
- Application by BBL Company for an Interconnector licence to participate in the operation of the Balgzland Bacton Line, Ofgem Initial Views, December 2004  
[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/9591\\_27804.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/9591_27804.pdf)
- Interconnector Licences: Determination of Standard Licence Conditions, DTI Final Views, March 2005, <http://www.dti.gov.uk/publications/index.html>
- Application by BBL Company for an Interconnector licence to participate in the operation of the Balgzland Bacton Line, Ofgem Final Views, April 2005  
[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/11072\\_11405.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/11072_11405.pdf)

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## Summary

The purpose of this document is to invite views from interested parties on Ofgem's initial view that an exemption from regulated third party access requirements should be granted to BritNed for the construction of an electricity interconnector between Great Britain and the Netherlands, referred to below as "the interconnector".

### Background

The electricity interconnector licence (granted under the Electricity Act 1989) introduces, amongst other things, a regulated Third Party Access (rTPA) regime. An exemption order may be granted, establishing that the licence conditions which relate to rTPA (namely, Standard Licence Conditions 9, 10 and 11) are not in effect or are suspended from operation. The Authority may also exempt interconnectors from the provisions of Article 6(6) of Regulation (EC) No. 1228/2003 (the "Regulation") relative to the use of revenues from the interconnector, provided that the criteria set out in Article 7 (1) of the Regulation are met (see Appendix 4 for more details).

In June 2006 BritNed submitted a formal application to the Authority for an interconnector licence and for an exemption from the rTPA provisions in the licence and the Regulation. In its application, BritNed provided details as to why it satisfies the criteria outlined in the electricity interconnector licence and the Regulation.

Given that the interconnector is between Great Britain and the Netherlands, BritNed has also applied for an exemption to the relevant Dutch authorities, including the Office of Energy Regulation (DTe), which is to advise the Dutch Ministry of Economic Affairs on the granting of an exemption. Ofgem is maintaining close contact with the Dutch authorities and the European Commission so as to ensure the best possible coordination between the two exemption application processes.

The European Commission can veto a decision by the national authorities to grant an exemption from rTPA requirements. Under the Regulation, the Commission may, within two months after receiving notification of a decision to grant an exemption, request the relevant authority to amend or withdraw its decision. This two month period may be extended by one additional month where further information is sought by the Commission.

### Ofgem's views

In this document, we outline our initial view that BritNed's application meets all of the relevant criteria for exemption. As a result, the Authority is minded to suspend Standard Licence Conditions 9, 10 and 11 from operation in the electricity interconnector licence and to grant an exemption from Article 6(6) of the Regulation.

We came to this conclusion after consideration of the application against the relevant criteria.

Based on our analysis, we believe that this project could be expected to have an overall positive impact on competition in the electricity supply and generation markets and inter state competition and could improve security and diversity of electricity supply in Great Britain. In the document, we invite views from interested parties on our assessment.

In its application, BritNed gave us information on how it anticipates the interconnector to operate. We welcome BritNed's intention to offer capacity to the market using a mix of implicit and explicit auctions as recommended in the EU guidelines. We believe that this will further improve the interconnector's potential to enhance competition. While we welcome such commitment, we also outline some of our concerns regarding the lack of clarity surrounding the arrangements for dealing with the differences between the balancing periods in the markets in Great Britain and the Netherlands. This document seeks further views from interested parties with respect to the most appropriate form for such arrangements.

## Way forward

We invite views on BritNed's application and on our initial views on the application. Once we have taken respondents' views into consideration, we will issue a Final Views document setting out our decision. Although we will need to satisfy ourselves that all the criteria for the exemption are met in Great Britain, our decision will be coordinated with that of the Dutch authorities, which are in the process of reviewing a similar exemption application from BritNed.

If we decide to grant an exemption, our decision will be sent to the European Commission who may amend or withdraw the decision to grant an exemption<sup>1</sup>.

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<sup>1</sup> According to EU Regulation 1228/2003/EC Article 7(5).

## 1. Introduction

### Chapter Summary

This chapter outlines the background to the BritNed interconnector project and provides background to the relevant legislation for granting an exemption. It also outlines the structure of this document and the way forward.

### The project

1.1. BritNed is proposing to build a high voltage DC electricity cable between the Isle of Grain in Great Britain and Maasvlakte in the Netherlands. BritNed has not yet made a final decision on the capacity of the interconnector. However, a feasibility study established that the technically feasible capacity for the link is in the range of 700-1320 MW depending on the assumptions made. Further details concerning the elements of the proposed interconnector are contained in BritNed's application document, a public version of which can be found on the Ofgem's website.<sup>2</sup>

1.2. During the current development phase, BritNed is a joint venture between National Grid International Ltd (NGIL), a 100% owned subsidiary of National Grid plc (NG), and NLink International B.V. (NLink), a 100% owned subsidiary of TenneT Holding B.V (TenneT).

1.3. BritNed will not buy or sell power itself as it is purely an infrastructure company. The interconnector capacity will be made available to the British and Dutch market via a combination of 'implicit' exchange to exchange auctions and limited duration physical capacity auctions. It will be the market that ultimately decides which way power will flow. This means that power could flow either from the Netherlands to Great Britain or vice versa. APX has been retained to act as the exchange to exchange operator.

1.4. BritNed aims to take an investment decision around late 2006/early 2007. BritNed has stated that, subject to the relevant exemptions being obtained, it is due to start construction of the interconnector during the first half of 2007. The BritNed cable is expected to come into operation in the middle of 2010.

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<sup>2</sup> "Application for EU exemption" BritNed development Ltd, 12 June 2006. [www.ofgem.gov.uk](http://www.ofgem.gov.uk)

## The application

1.5. On 13 June 2006, BritNed submitted a formal application to Ofgem for an exemption in relation to a proposed interconnector between the Dutch and Great Britain's electricity transmission system, to be owned and operated by BritNed. BritNed is seeking an exemption for a period of 25 years.

1.6. In its application, BritNed stated that its motivation for seeking an exemption is "solely to ensure that the risk/reward balance remains aligned over the duration of the exemption". It is not seeking to institute an access regime materially different to what is required under an rTPA regime. Further details of the reasons behind its exemption request are contained in its application.

1.7. BritNed's application includes an assessment of the BritNed interconnector project against the six conditions which must be met for a new interconnector to be granted an exemption under the electricity interconnector licence. These conditions must also be met in order for BritNed to be granted an exemption from Article 6(6) of the Regulation. The conditions are as follows:

- (a) the investment must enhance competition in electricity supply;
- (b) the level of risk attached to the investment is such that the investment would not take place unless the exemption is granted;
- (c) the interconnector must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that interconnector will be built;
- (d) charges will be levied on users of that interconnector;
- (e) since the partial market opening referred to in Article 19 of Directive 96/92/EC, no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of the transmission or distribution systems linked by the interconnector; and
- (f) the exemption is not detrimental to competition or the effective functioning of the internal electricity market, or the efficient functioning of the regulated system to which the interconnector is linked.

1.8. BritNed's application also sets out at a high level the proposed access arrangements and its intention to develop intra-day trading arrangements as well as information disclosure provisions, which we review alongside whether or not BritNed's application has met the relevant criteria for obtaining an exemption.

1.9. Finally, BritNed has outlined in its application that, since the interconnector spans two jurisdictions, exemptions in both Great Britain and the Netherlands are necessary to make the project viable. For this reason, we have been liaising closely with the Dutch authorities with respect to the process they are following for



assessing the exemption application. The Authority will determine the need for an exemption based purely on its relevance for the market in Great Britain. Any difference in views as to whether the exemption should be granted or not will need to be resolved if and when they materialise.

## Structure and Approach

1.10. Chapter 2 of this document provides further details on BritNed's application, including its assessment of how it meets the criteria for an exemption. This chapter also sets out Ofgem's analysis and our initial views on BritNed's application for an exemption, as well as Ofgem's comments on BritNed's proposed operating arrangements and information disclosure. We welcome comments on our assessment of the BritNed project against the relevant requirements as outlined in Chapter 2 of this document.

1.11. Chapter 3 outlines the process and future way forward.

1.12. Further information of the legal and policy requirements can be found in Appendix 4.

1.13. A draft exemption order can be found in Appendix 5 whilst a draft interconnector licence (with Standard Licence Conditions 9, 10 and 11 suspended from operation) is provided in Appendix 6.

## Way Forward

1.14. We would welcome views from interested parties regarding BritNed's application and our initial views via the series of questions outlined in this document. Responses should be sent to [wholesale.markets@ofgem.gov.uk](mailto:wholesale.markets@ofgem.gov.uk) and should be received no later than 17 October 2006. Details of how to respond can be found in Appendix 1.

1.15. Based on our analysis of the issues and responses to the consultation, we will aim to publish a final decision on the proposal by 31 October 2006. We will then notify the European Commission of our decision, which may request the Authority to amend or withdraw its decision. From the date of our submission, the Commission has two months to consider its response. This two month period may be extended by one additional month if further information is sought by the Commission.

## 2. BritNed's application and Ofgem's initial views

### Chapter Summary

This Chapter provides a summary of BritNed's application for an electricity interconnector licence with an exemption from rTPA. This Chapter then sets out Ofgem's initial views on those issues, focusing particularly on whether BritNed has met the relevant criteria for such an exemption to be granted and providing additional comments on the proposed operating arrangements and information disclosure. The Chapter concludes by establishing the scope and duration and conditions for revocation of the proposed exemption.

### Question box

#### Question 1

Do you agree with our overall assessment that the exemption should be granted based on the examination of whether the exemption criteria have been met?

#### Question 2

Given the lack of clarity in the application surrounding the arrangements for dealing with the differences between the balancing periods in the markets in Great Britain and the Netherlands, do you have views on what the most appropriate form for such arrangements should be?

#### Question 3

Do you agree with the proposed scope and duration for the exemption, and the conditions for revocation?

## Introduction

2.1. In reviewing BritNed's application, Ofgem has taken account of the fact that the way in which BritNed proposes to run the interconnector is very different from the way in which other infrastructure that have obtained exemptions from rTPA in the past are being run. Infrastructure operators that have previously applied for exemptions (such as gas interconnectors, gas storage or LNG import terminals) have largely done so because they needed to enter into long-term contracts with primary capacity holders in order to support the viability of their investment. By contrast, BritNed will not be entering into long-term capacity contracts but will rather offer capacity on the interconnector through a mix of implicit and explicit auctions, with no contract longer than one year.

2.2. In certain circumstances, the signing of long-term exclusionary contracts can be harmful to competition. This can be alleviated through the organisation of an open season process for the initial allocation of capacity rights and the adoption of effective Use It or Lose It (UIoLI) arrangements. By contrast, the way in which

BritNed is proposing to run the interconnector is more akin to rTPA, which means that associated competition concerns are minimised. In fact, the main reason why BritNed is seeking an exemption from rTPA is in order to reduce the commercial risk of the project and not be subject to the need to get approval for its charging methodology or use of revenues from the interconnector.

## Conditions for the exemption to be granted

2.3. This section summarises BritNed's analysis of the conditions that are required to be met for the exemption to be granted. Further details of BritNed's assessment against each of the conditions are contained in BritNed's application.<sup>3</sup> We set out Ofgem's initial views on each of those conditions, on the basis of the arguments put forward by BritNed as well as our own analysis. Views are sought from consultation respondents as to whether those conditions are effectively met.

2.4. Our analysis of whether the investment in itself enhances competition (condition a) has been conducted in close interaction with our analysis of the impact of competition of the exemption (condition f). Under our analysis of condition (f), we have considered in more detail the way in which BritNed is proposing to provide access to capacity over the interconnector, i.e. through recurrent auctions rather than through long-term contracts.

### **Condition (a): the investment in the interconnector enhances competition in electricity supply**

2.5. In its application, BritNed bases its assessment against condition (a) on an independent competition assessment it commissioned Frontier Economics ("Frontier") to undertake. BritNed states that the main conclusion of Frontier's competition assessment is that the investment *per se* (regardless of access and ownership issues) would enhance competition. In addition, they state that the intended ownership and a regime of access in accordance with rTPA would not jeopardise the competitive benefits that the investment would bring.

#### *Ofgem's initial view*

2.6. We have evaluated whether the investment would enhance competition in the electricity supply market. In undertaking this assessment, we have considered both the electricity generation and supply markets in Great Britain as markets which are affected by the BritNed interconnector. We accept BritNed's argument that the interconnector would enable Dutch generators to compete more effectively in the British wholesale market and will enable British retailers to procure power from the Netherlands, thus enhancing competition in the electricity generation and supply

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<sup>3</sup> "Application for EU exemption" BritNed development Ltd, 12 June 2006. [www.ofgem.gov.uk](http://www.ofgem.gov.uk)

markets. Similar effects would likely be observed in the Dutch market, depending on which way the power will flow.

2.7. Even though BritNed has not determined the final size of the cable, we estimate that it would represent between 0.7% and 1.4% of electricity generation capacity in Great Britain by 2010/11, based on the range of capacity provided by the applicant. As a result, even if the capacity of the BritNed interconnector was procured by the largest electricity supply company in Great Britain, the market share of this supplier would not change materially given the relatively small size of the interconnector and such supplier would not be able to take advantage of its position to influence market prices. Given the way in which BritNed has stated that it will offer capacity to the market, i.e. in a manner akin to rTPA, the situation whereby a single supplier holds all capacity at BritNed would not be likely. Therefore, we estimate that the potential for market manipulation by one supplier is absent and that the investment would not have any detrimental impact on competition under any circumstance.

2.8. In conclusion, we believe that the BritNed interconnector would likely enhance competition in electricity supply and that condition (a) is therefore likely to be met.

**Condition (b): the level of risk attached to the investment is such that the investment would not take place unless an exemption was granted**

2.9. In its application, BritNed indicates a number of risks that would mean that, according to them, the investment would not be built without the exemption. These risks include development risk; construction risk; start-up risk; operational risk; income volatility and regulatory risk. According to BritNed, the existence of such risks means that if the interconnector revenues were to be regulated, the sunk costs of the investment may not be recovered in full.

2.10. BritNed has outlined in its application that there will inevitably be good years and bad years for revenues to the investors. An rTPA regime could create an asymmetric risk for investors as there would be a risk that investors would not receive the full benefit of revenues in good years due to regulatory intervention whereas the downside risk would not be capped. This would create a revenue risk for the investment as a whole as above average revenues in a good year are required to compensate for the downside risk in this type of investment, particularly given that BritNed is not planning to enter into long-term contracts with capacity holders and will therefore face the full commercial risk of the investment.

2.11. In particular, BritNed has outlined that submarine interconnectors of this nature are capital intensive given the unforeseen issues that may be found once the cable is installed. If the revenues were regulated, there would be a risk according to BritNed that the revenues may be derived on an entirely different basis from those anticipated at the commencement of the project and could be less than anticipated to be sufficient to make the project viable.

*Ofgem's initial view*

2.12. We would generally argue (as we did in the Ofgem and DTI's Final View document published in November 2003<sup>4</sup>) that the development of investments with this level of risk would not normally fit within the class of infrastructure developments that would be allowed to recover costs as part of the Transmission System Operator's remuneration. For this type of investment, project developers and the users of the facility would preferably share the risks and any upside returns would be capped by competitive pressures. This is preferable to a regime whereby the risks are shared with all system users and the investor receives downside risk protection in exchange for a cap on the upside revenues.

2.13. The fact that BritNed is not planning to enter into long-term contracts for capacity allocation makes the commercial risk particularly significant, although it also increases BritNed's incentives for managing the infrastructure effectively and enhancing security of supply.

2.14. Our initial view is that the development would not go ahead without the exemption being granted as BritNed would not have sufficient confidence in the level of future revenues given the level of risk attached to the investment. We are therefore satisfied that condition (b) is likely to be met.

**Condition (c): the interconnector will be owned by a natural or legal person which is separate at least in terms of its legal form from the relevant system operators to whose systems that infrastructure will be connected**

2.15. In its current form BritNed is a joint venture between National Grid International Ltd ("NGIL") (a 100% owned subsidiary of National Grid plc) and NLink International B.V. (a 100% owned subsidiary of TenneT Holding B.V). BritNed has outlined in its application that it is a fully separate legal entity from the owners of the two Transmission System Operators that the proposed interconnector will connect. BritNed also has full financial separation from the other companies within NG and TenneT Holding, including the requirement to file separate accounts. BritNed has stated that any changes to the corporate structure of the project company will not undermine the conditions of the exemption.

*Ofgem's initial view*

2.16. Having considered the corporate structure of National Grid plc, we believe that BritNed has provided adequate information setting out that BritNed would be fully

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<sup>4</sup> LNG facilities and interconnectors, EU legislation and regulatory regime, DTI/Ofgem final views', DTI/Ofgem, November 2003.  
[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/5158\\_LNG\\_facilities\\_intercntrs\\_EU\\_legis\\_reg\\_25nov03.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/5158_LNG_facilities_intercntrs_EU_legis_reg_25nov03.pdf)

separate from National Grid Electricity Transmission plc (NGET), the system operator to which the infrastructure would be connected in Great Britain.

2.17. Based on those considerations, we are satisfied that BritNed is adequately separated from the transmission system operator in Great Britain in order to fulfil this condition.

**Condition (d): charges will be levied on users of the interconnector**

2.18. As set out in BritNed's application, the proposed interconnector will be exclusively paid for by its users (i.e. the power exchanges and purchasers of capacity rights). All of BritNed's costs (capital investment and operational expenditure) will need to be recovered through the sale and use of its capacity. This means that none of BritNed's costs will be underwritten through regulated transmission charges.

*Ofgem's initial view*

2.19. We believe that BritNed has provided adequate information to show that charges will be levied on users of the interconnector. As a result, we are satisfied that condition (d) would be met.

**Condition (e): since the partial opening referred to in Article 19 of Directive 96/92/EC, no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the licensee's interconnector**

2.20. In its application, BritNed indicates that none of its costs have been or will be recovered from any charges made for the use of the systems to be linked by the interconnector.

*Ofgem's initial view*

2.21. This requirement effectively rules out any exemption being applied to existing interconnectors, as indicated in the EU Commission guidelines (see Appendix 4 for more details). Since this is a new (proposed) investment, no part of the capital costs invested will have been recovered from any component of charges made for the use of the transmission or distribution systems linked by the interconnector. Further, we note that the regulatory regime prevents this from being a possibility in Great Britain.

2.22. Therefore, we believe that no part of the capital or operating costs of the interconnector have been recovered from any component of charges made for the use of transmission or distribution systems linked by the licensee's interconnector. We are satisfied BritNed satisfies condition (e) for obtaining an exemption.

**Condition (f): the exemption is not detrimental to competition or the effective functioning of the internal electricity market, or the efficient functioning of the regulated system to which the interconnector is connected**

2.23. In its application, BritNed indicates that the interconnector will have a positive impact on competition in electricity supply in Great Britain, which is necessary in order to fulfil condition (a). In addition, BritNed states that the exemption itself will not be detrimental to competition as the interconnector will be making all the capacity available to the market through a mix of implicit and explicit auctions in a way that is similar to rTPA requirements. It states that the interconnector will comply with the information requirements set out by the DTI and Ofgem in their Final Views document, as they will publish information to the market according to rules based on those implemented by the Anglo-French Interconnector (IFA).

2.24. BritNed also outlines that the exemption will not be to the detriment of the effective functioning of the internal electricity market. BritNed states that given that the Netherlands is interconnected to other European countries, the increase in competition in the Netherlands wholesale market will also create competitive benefits in neighbouring countries.

2.25. BritNed outlines that the interconnector will comply with all requirements set out by the transmission system operator in Great Britain, NGET. These include preventing parties from connecting to its system until any necessary extensions to its system are completed; restricting the operation of connected parties until the necessary extensions to its system are completed; obliging all connected parties to comply with the Grid Code; and obliging parties to comply with site-specific technical conditions. Compliance with these requirements are ensured through the Construction Agreement and Bilateral Connection Agreement signed between NGET and BritNed and through the Connection and Use of System Code to which BritNed has acceded. According to BritNed, this ensures that BritNed's operation will not be to the detriment of the efficient functioning of the British regulated electricity transmission system.

2.26. Although BritNed proposes that its charging methodology would not be approved by the regulator, the access arrangements put forward by BritNed in its application would resemble those of an rTPA access regime. BritNed proposes that access to the interconnector be provided using a blend of implicit auctions at the day-ahead stage and short term explicit capacity auctions (with contract duration of no longer than one year) of physical capacity rights. The allocation of capacity between various types of auction will be adjusted in response to market demand. These arrangements will be operated as exchange to exchange trading whereby power will flow to the market with the highest price, which could either be Great Britain or the Netherlands depending on market circumstances.

2.27. BritNed sets out that these arrangements will be fully consistent with the provisions of the latest draft of the Congestion Management Guidelines, as published by ERGEG in May 2005.<sup>5</sup> In its application, BritNed states that it will comply with any future guidelines as to how Use it or Lose it/Use it or Sell it arrangements should best be put in place.

2.28. Finally, we note that BritNed is also proposing to develop mechanisms for intra-day trading (as required by the draft congestion management guidelines) and trading between the transmission system operators ("TSOs") (subject to their agreement). However, BritNed has not put forward its final views on how this trading system will operate as yet. BritNed has stated that it is committed to ensuring that any trading mechanisms implemented will be fully compliant with the relevant EU guidelines.

#### *Ofgem's initial view*

2.29. In its guidance on the application of exemption criteria, the Commission outlines that this condition has similarities with condition (a) but that, in this case, "the exemption itself should not be to the detriment of the competitive functioning of the market" (see Appendix 4 for further details).

2.30. It is important to note, as outlined in paragraph 2.1, that BritNed's application is different from other similar applications received for other interconnectors or LNG import facilities which tend to tie capacity to long term contracts over the duration of the exemption. Under certain circumstances, applications with associated long-term contracts can raise challenging competition issues, particularly if capacity is sold to a party with an already strong position in the relevant market. As BritNed will effectively be operating on a basis which is similar to rTPA, however, it appears that there is no scope for the exemption to be to the detriment to competition or the effective functioning of the internal electricity market, or the efficient functioning of the regulated system to which the interconnector is connected.

2.31. Nevertheless, and for completeness, we have considered the impact of the exemption on competition and the efficient functioning of the electricity supply market. As mentioned above in paragraph 2.7, our analysis shows that the exemption would not have a detrimental impact on competition given the small size of the interconnector. There would be no material change to the market concentration or market shares of the biggest parties, even if one such party secured all the capacity at the interconnector.

2.32. In addition, given that the Use It or Lose It (UIoLI) arrangements that BritNed aims to put in place at the facility would be akin to rTPA, there would be limited opportunity for capacity holders to hoard capacity in order to potentially increase

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<sup>5</sup>

[http://www.ergreg.org/portal/page/portal/ERGEG\\_HOME/ERGEG\\_PC/ARCHIVE1/CM\\_GL/INTRODUCTORY\\_NOTE\\_ERGEG\\_AMENDMENTS\\_GUIDELINES\\_CM\\_2005050.PDF](http://www.ergreg.org/portal/page/portal/ERGEG_HOME/ERGEG_PC/ARCHIVE1/CM_GL/INTRODUCTORY_NOTE_ERGEG_AMENDMENTS_GUIDELINES_CM_2005050.PDF)



prices in the electricity supply market. On the one hand, capacity will not be sold for any longer than one year. Further, given the proposed type of auction process, there would be limited opportunity for a party to secure capacity on a rolling basis. However, as part of monitoring the exemption, we would examine whether such arrangements are functioning effectively so to ensure access to capacity at the interconnector to all potentially interested parties.

2.33. The type of information disclosure arrangements envisaged by BritNed and its commitment to transparency further indicates that the exemption would not be detrimental to competition. Given the commercial nature of the operation, BritNed would be fully incentivised to make available capacity known to the market so as to ensure that the interconnector is fully utilised. This would be strengthened by the fact that Standard Licence Condition 13 in the interconnector licence requires the licence holder to publish open, transparent and non-discriminatory capacity allocation mechanisms on its website. If the final arrangements did not fulfil these requirements, Ofgem could seek to enforce Standard Licence Condition 13 to ensure that the arrangements are transparent and non discriminatory.

2.34. We also believe that the exemption will not be to the detriment of the effective functioning of the internal electricity market across Europe. The interconnector will facilitate trade between the markets in the Netherlands and Great Britain. Given that the Netherlands wholesale electricity market is also connected to other European countries, the interconnector will also increase the scope for further competition between neighbouring European countries. We also believe that there are low barriers to entry in using the interconnector, given the way in which the interconnector will be operated. We believe this will further benefit the effective functioning of the electricity market across Europe by enabling other market participants to utilise the interconnector and to gain entry into the electricity markets in Great Britain or the Netherlands.

2.35. Finally, we believe that the exemption will not be detrimental to the efficient functioning of the regulated system to which the infrastructure is connected. Given the proposed contractual arrangements between NGET and BritNed and the fact that BritNed will sign up to the relevant codes, transmission entry capacity to the NG transmission system will be booked in a manner that will be consistent with other entry capacity users. Furthermore, we expect that any technical implications of the connection will be resolved by BritNed and NG Electricity Transmission plc.

2.36. In summary, our analysis, together with the pro competitive arrangements under which BritNed will operate the interconnector, mean that we are satisfied that the exemption will not be detrimental to competition or the effective functioning of the internal electricity market, or the functioning of the regulated system to which the licensee's interconnector is connected.

2.37. Below we provide further comments on the proposed operating arrangements and we raise specific issues that we believe BritNed will need to address in more detail prior to the exemption being granted. We also provide additional comments on the proposed information to be provided by BritNed.

## Proposed operating arrangements

### *Intra-day trading*

2.38. We will need to obtain further explanation from BritNed as to how the intra-day trading system will operate given that the markets in Great Britain and the Netherlands operate on different balancing periods. Following earlier request for information, BritNed indicated that the details of the arrangements are still to be finalised.

2.39. Given the differences in the arrangements between the markets in Great Britain and in the Netherlands, we may have potential concerns in relation to the arrangements for intra day trading. While we acknowledge that similar arrangements are presently in place for the Anglo-French interconnector (referred to as "IFA", or "Interconnexion France-Angleterre"), this could potentially emerge as a generic concern should these arrangements prevent the effective functioning of the interconnectors, particularly in times of tight supply conditions.

2.40. We are aware that the Electricity Regional Initiative (ERI), launched by the European Regulators Group for Electricity and Gas (ERGEG) in February 2006 is presently considering a similar issue in relation to the IFA interconnector.<sup>6</sup> The issues that are presently being considered by one of the groups (which includes representatives from Ofgem), include regulatory discrepancies between interconnected countries such as Great Britain and France. One such issue presently being considered by the group relates to the different trading arrangements between the markets in Great Britain, which operates on a half hourly trading basis and in France, which operates on a two-hourly basis. If the BritNed proposed interconnector was to go ahead, any subsequent findings or determinations following from the ERI regarding intra-day trading arrangements would need to be taken into account and could lead to a modification of the original terms of the exemption.

### *Trading between the transmission system operators (TSO)*

2.41. At this stage, it is unclear to Ofgem how proposed trading between the TSOs would work in practice. Following request for further information, BritNed has stated that it would only provide dedicated capacity rights to the TSOs if that was acceptable to the relevant regulatory authorities.

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<sup>6</sup> The ERI is an European-wide initiative intended as a concrete contribution to the integration of national markets by facilitating the creation of regional energy markets, in electricity and gas respectively. The aim of the ERI is to identify specific problematic impediments to trade or distortions to trade, and to introduce practical improvements that will contribute to removing them. This initiative has been set up to develop regional markets, together with further liberalisation at a national level. It is an important and practical step towards the eventual creation of a competitive single European energy market. For more information, see: [http://www.ergreg.org/portal/page/portal/ERGEG\\_HOME/ERGEG\\_DOCS/PRESS\\_RELEASES/E05-ERF-03-06B\\_ERI\\_FS-05-02-22.PDF](http://www.ergreg.org/portal/page/portal/ERGEG_HOME/ERGEG_DOCS/PRESS_RELEASES/E05-ERF-03-06B_ERI_FS-05-02-22.PDF).

2.42. At this stage, however, it is our view that the TSO should purchase ancillary services on the same terms as any other market participants and should not benefit from any preferential treatment in this regard.

### **Information provision**

2.43. BritNed is proposing to disclose information to the market according to rules based on those implemented by the Anglo-French Interconnector (IFA) connecting the markets in France and Great Britain. We consider that this is in line with the recommendations made in the DTI/Ofgem Final Views document. The IFA publish information concerning the charging methodologies as well as information on the eligibility requirements that need to be met to use the interconnector. Furthermore, IFA also publish results of the auction process on daily, weekend, monthly, quarterly, seasonal and annual auction results.

2.44. We believe that the provision of information is necessary for the effective functioning of a competitive market and welcome BritNed's commitment to publish information in accordance to rules of the IFA as well as relevant licence provisions. As always, information transparency is evolving and our views do not fetter the discretion of the Authority in relation to future views.

### **Duration and scope of the exemption**

2.45. BritNed has provided Ofgem with confidential information regarding the payback period of the interconnector to justify why the exemption is being sought for a period of 25 years.

2.46. BritNed has not provided final information on the capacity of the interconnector (which could range from 700 to 1320 MW).

#### *Ofgem's initial view*

2.47. Ofgem is satisfied with BritNed's explanation that the exemption is required for 25 years, given the pay-back period required for this type of investment and the financial analysis that was provided to us on a confidential basis. In addition, given that there will be no exclusive arrangements for use of the capacity over the interconnector, we are satisfied that an exemption of this duration would be proportionate and would not be to the detriment of competition.

2.48. It is proposed that any exemption granted at this stage would be granted with respect to either (a) the capacity of the interconnector as at the date of the interconnector commencing commercial operations or (b) a capacity of 1320MW, whichever is the less. The start of commercial operations would coincide with the point at which BritNed starts selling capacity over the interconnector to potential shippers through the mix of implicit/explicit auctions. This is reflected in the draft exemption order contained in Appendix 5.

2.49. If there was a subsequent extension to the capacity of the interconnector, BritNed would need to go through a separate exemption application process in relation to that increase in capacity.

### **The Exemption Order and conditions for its application**

2.50. For the reasons outlined in this Chapter, we are minded to grant BritNed the exemptions that it has requested. A draft exemption order is provided in Appendix 5. A draft interconnector licence, with Standard Licence Conditions 9, 10 and 11 suspended from operation is presented in Appendix 6.

2.51. In line with the DTI/Ofgem Final Views document published in November 2003, the Authority could review the exemption should any of the relevant withdrawal criteria in this document be met.

2.52. The exemption is granted on the basis of the information provided by BritNed in its application and further analysis undertaken by Ofgem. If there was a change to the commitments that BritNed has provided in its application, or if there was any change to the underlying data provided by BritNed as part of its explanation as to how it meets the relevant criteria, this could be grounds for the Authority to review and potentially revoke the exemption.

2.53. In addition to the revocation conditions contained within the exemption order there are also additional provisions in the electricity interconnector licence. Standard Licence Condition 13 requires the licence holder to publish on its website open, transparent and non-discriminatory capacity allocation mechanism. This licence condition also requires the licence holder to take all reasonable steps to allow and facilitate capacity rights to be freely tradable in a secondary market. We believe that this licence condition provides further regulatory control on ensuring that there is an effective secondary capacity trading mechanism in place. Any failure to comply with the provisions of the licence could lead to enforcement action of the Authority under its powers granted to it in the Electricity Act.

2.54. In the event that any of the circumstances occur which allow Ofgem to withdraw the exemption, Ofgem would likely issue a consultation document setting out the reasons for its decision.

2.55. For the avoidance of doubt, Ofgem's analysis has been carried out against the relevant criteria for granting an exemption from rTPA requirements and is specific to the application that Ofgem is considering. Any decision that Ofgem may make in relation to this application does not preclude or impact in any way on the operation of the Competition Act 1998 or the Enterprise Act 2002. Further, as the analysis contained in this document has been carried out in relation to a specific situation, the analysis may or may not necessarily be relevant to a consideration of any related issue that may arise, for example, under the Electricity Act 1989, the Competition Act 1998 or the Enterprise Act 2002.

## 3. Process and way forward

This Chapter provides an overview of the process going forward

### Process

3.1. Ofgem welcomes respondents' views to the questions outlined in chapter 2 in relation to whether BritNed has met the relevant criteria for obtaining an exemption from rTPA. We will take such views into consideration when forming our final views.

### Way forward

3.2. Having considered respondents' views, we will publish our final views document and issue the electricity interconnector licence either with the relevant licence conditions in effect or not, and either with or without an exemption under Article 7(1) of the Regulation.

3.3. If the Authority decides to grant the relevant exemptions, we will send this decision to the European Commission who has the right of veto. Any final decision will be coordinated with the Dutch authorities.

## Appendices

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## Appendix 1 - Consultation Response and Questions

1.1. Ofgem would like to hear the views of interested parties in relation to any of the issues set out in this document. In particular, we would like to hear from electricity generators, interconnector owners and operators, suppliers and other interested parties.

1.2. We would especially welcome responses to the specific questions which we have set out at the beginning of chapter 2 heading and which are replicated below.

1.3. Responses should be received by 17 October and should be sent to:

Sonia Brown  
Director, Wholesale Markets  
9 Millbank,  
London  
SW1P 3GE  
[Wholesale.markets@ofgem.gov.uk](mailto:Wholesale.markets@ofgem.gov.uk)

1.4. Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website at the following address: [www.ofgem.gov.uk](http://www.ofgem.gov.uk). Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

1.5. Respondents who wish to have their responses remain confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. It would be helpful if responses could be submitted both electronically and in writing. Respondents are asked to put any confidential material in the appendices to their responses.

1.6. Next steps: Having considered the responses to this consultation, Ofgem intends to make a decision as to whether to grant BritNed an exemption or not. Any questions on this document should, in the first instance, be directed to:

Helen Connolly  
Wholesale markets  
Ofgem  
9 Millbank  
London  
SW1P 3GE  
0207 901 7267  
[Helen.connolly@ofgem.gov.uk](mailto:Helen.connolly@ofgem.gov.uk)

**CHAPTER: Two****Question 1**

Do you agree with our overall assessment that the exemption should be granted based on the examination of whether the exemption criteria have been met?

**Question 2**

Given the lack of clarity in the application surrounding the arrangements for dealing with the differences between the balancing periods in the markets in Great Britain and the Netherlands, do you have views on what the most appropriate form for such arrangements should be?

**Question 3**

Do you agree with the proposed scope and duration for the exemption, and the conditions for revocation?



## Appendix 2 – Feedback Questionnaire

1.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

1.2. Please send your comments to:

**Andrew MacFaul**  
Consultation Co-ordinator  
Ofgem  
9 Millbank  
London  
SW1P 3GE  
[Andrew.macfaul@ofgem.gov.uk](mailto:Andrew.macfaul@ofgem.gov.uk)

## Appendix 3 – The Authority's Powers and Duties

1.1. Ofgem is the Office of Gas and Electricity Markets which supports the Gas and Electricity Markets Authority ("the Authority"), the regulator of the gas and electricity industries in Great Britain. This Appendix summarises the primary powers and duties of the Authority. It is not comprehensive and is not a substitute to reference to the relevant legal instruments (including, but not limited to, those referred to below).

1.2. The Authority's powers and duties are largely provided for in statute, principally the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Act 2004, as well as arising from directly effective European Community legislation. References to the Gas Act and the Electricity Act in this Appendix are to Part 1 of each of those Acts.<sup>7</sup>

1.3. Duties and functions relating to gas are set out in the Gas Act and those relating to electricity are set out in the Electricity Act. This Appendix must be read accordingly<sup>8</sup>.

1.4. The Authority's principal objective when carrying out certain of its functions under each of the Gas Act and the Electricity Act is to protect the interests of consumers, present and future, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas conveyed through pipes, and the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors.

1.5. The Authority must when carrying out those functions have regard to:

- The need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;
- The need to secure that all reasonable demands for electricity are met;
- The need to secure that licence holders are able to finance the activities which are the subject of obligations on them<sup>9</sup>; and
- The interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.<sup>10</sup>

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<sup>7</sup> entitled "Gas Supply" and "Electricity Supply" respectively.

<sup>8</sup> However, in exercising a function under the Electricity Act the Authority may have regard to the interests of consumers in relation to gas conveyed through pipes and vice versa in the case of it exercising a function under the Gas Act.

<sup>9</sup> under the Gas Act and the Utilities Act, in the case of Gas Act functions, or the Electricity Act, the Utilities Act and certain parts of the Energy Act in the case of Electricity Act functions.

<sup>10</sup> The Authority may have regard to other descriptions of consumers.

1.6. Subject to the above, the Authority is required to carry out the functions referred to in the manner which it considers is best calculated to:

- Promote efficiency and economy on the part of those licensed<sup>11</sup> under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems;
- Protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes and from the generation, transmission, distribution or supply of electricity;
- Contribute to the achievement of sustainable development; and
- Secure a diverse and viable long-term energy supply.

1.7. In carrying out the functions referred to, the Authority must also have regard, to:

- The effect on the environment of activities connected with the conveyance of gas through pipes or with the generation, transmission, distribution or supply of electricity;
- The principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles that appear to it to represent the best regulatory practice; and
- Certain statutory guidance on social and environmental matters issued by the Secretary of State.

1.8. The Authority has powers under the Competition Act to investigate suspected anti-competitive activity and take action for breaches of the prohibitions in the legislation in respect of the gas and electricity sectors in Great Britain and is a designated National Competition Authority under the EC Modernisation Regulation<sup>12</sup> and therefore part of the European Competition Network. The Authority also has concurrent powers with the Office of Fair Trading in respect of market investigation references to the Competition Commission.

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<sup>11</sup> or persons authorised by exemptions to carry on any activity.

<sup>12</sup> Council Regulation (EC) 1/2003

## Appendix 4 - Legal and policy regime for exemptions from rTPA

1.1. This Appendix sets out the legal and policy regime for granting exemptions from regulated third party access (rTPA), focusing on what is outlined in the EU Electricity Directive<sup>13</sup> (the "Directive") as transposed into UK law, as well as in the EU Regulation<sup>14</sup> (the "Regulation"). It also discusses policy guidance provided by Ofgem and the DTI for dealing with such applications for exemptions.

### The EU Electricity Directive and Regulation

1.2. The Directive<sup>15</sup> and Regulation<sup>16</sup> introduced, amongst other things, a regulated third party access (rTPA) regime for interconnectors. These texts also established how interconnectors could be exempt from such regime, as set out in more detail below.

1.3. The requirements of the Directive were incorporated in Great Britain via the Energy Act 2004, which introduced a licensing regime for all electricity interconnectors. The Regulation is directly applicable in UK law.

1.4. On 18 March 2005, the Secretary of State determined the Standard Licence Conditions for electricity interconnector licences.<sup>17</sup> The rTPA requirements of the Directive are reflected in Standard Licence Conditions 10 ("Charging methodology to apply to third party access to the licensee's interconnector") and 11 ("Requirement to offer terms for the access to the licensee's interconnector"). An exemption order may be granted under Standard Licence Condition 12 of the interconnector licence such that any or all of Conditions 9, 10 and 11 may not be in effect or may be suspended from operation, provided that the requirements set out in paragraph 6 of Standard Licence Condition 12 are met.

1.5. Article 6(6) of the Regulation contains provisions in relation to the use of revenues resulting from the allocation of interconnection. These are similar to what is set out in Standard Licence Condition 9 of the electricity interconnector licence ("use of revenues"). Exemption from the use of revenue provisions of the Regulation and

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<sup>13</sup> Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity.

<sup>14</sup> Regulation No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity.

<sup>15</sup> Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity.

<sup>16</sup> Regulation No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity.

<sup>17</sup> Electricity Interconnector Licence: Standard Conditions, Energy Act 2004 Determination of Standard Licence Conditions for Electricity Interconnector Licences.

the rTPA requirements that flow from the Directive may be granted under Article 7(1) of the Regulation, provided the conditions set out in this Article are met. These conditions are similar to the requirements set out in paragraph 6 of Standard Licence Condition 12.

1.6. The criteria for granting an exemption from the requirements of the Directive and Regulation in relation to rTPA, as detailed in paragraph 6 of Standard Licence Condition 12 and Article 7 (1) of the Regulation are summarised below:

- (a) the investment must enhance competition in electricity supply;
- (b) the level of risk attached to the investment is such that the investment would not take place unless the exemption is granted;
- (c) the interconnector must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators to whose systems that interconnector will be connected;
- (d) charges are levied on users of that interconnector;
- (e) since the partial market opening referred to in Article 19 of Directive 96/92/EC, no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of the transmission or distribution systems linked by the interconnector; and
- (f) the exemption is not detrimental to competition or the effective functioning of the internal electricity market, or the efficient functioning of the regulated system to which the interconnector is connected.

### **DTI /Ofgem exemption policy**

3.4. In June 2003, the DTI and Ofgem issued a joint consultation document concerning new EU regulations relating to LNG facilities and interconnectors.<sup>18</sup> In November 2003, the DTI and Ofgem issued their final views in this area.<sup>19</sup> The final views document, by and large, confirmed and clarified the position set out in the initial views document.

3.5. In their Final Views document, DTI and Ofgem identified three important features for an exempt regime in addition to fulfilling the criteria specified in

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<sup>18</sup> 'LNG facilities and interconnectors, EU legislation and regulatory regime, DTI/Ofgem initial views', DTI/Ofgem, June 2003.

<sup>19</sup> 'LNG facilities and interconnectors, EU legislation and regulatory regime, DTI/Ofgem final views', DTI/Ofgem, November 2003.  
[http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/5158\\_LNG\\_facilities\\_intercntrs\\_EU legis\\_reg\\_25nov03.pdf](http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/5158_LNG_facilities_intercntrs_EU legis_reg_25nov03.pdf)

Standard Licence Condition 12 of the electricity interconnector licence or Article 6(6) of the Regulation:

- to initially offer capacity to the market (though this condition might be loosened under specific circumstances);
- to have effective secondary trading and anti-hoarding mechanisms to ensure that capacity at a facility is offered to the market and not hoarded; and
- for information to be made available to the regulator and/or published.

### **EU Guidance on exemptions from certain provisions of the third party access regime**

1.7. In January 2004, DG Energy & Transport issued a non-binding guidance note on Directives 2003/54-55 and Regulation 1228/03 in the electricity and gas internal market (referred to as the "EU Guidance"). This guidance provides additional information as to how the criteria for granting the exemption can be evaluated and the type of information that would be required for such exemption to be granted.

**Appendix 5 - Draft exemption order****ELECTRICITY ACT 1989: INTERCONNECTOR LICENCE  
REGULATION (EC) No 1228/2003  
DRAFT EXEMPTION ORDER**

Pursuant to:

- (a) paragraph 2 of standard licence condition 12 of the Electricity Interconnector Licence (the "Licence") granted to BritNed Development Limited<sup>1</sup> ("BritNed") under section 6(1)(e) of the Electricity Act 1989, such licence authorising BritNed to participate in the operation of a high voltage DC electricity interconnector between the Isle of Grain in Great Britain and Maasvlakte in the Netherlands; and
- (b) Article 7(1) of Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity (the "Regulation"),

the Gas and Electricity Markets Authority hereby issues to BritNed an exemption order:

- (i) providing that standard licence conditions 9, 10 and 11 of the Licence are suspended from operation, and
- (ii) exempting BritNed from the provisions of Article 6(6) of the Regulation in relation to the Interconnector,

subject to the terms and conditions in the attached Schedule.

Authorised in that behalf by the  
Gas and Electricity Markets Authority

<sup>1</sup> Registered in England No. 04251409. Registered Office: 1-3 Strand, London WC2N 5EH.

**SCHEDULE****PERIOD, CONDITIONS, AND REVOCATION OF EXEMPTION ORDER****A. Interpretation and Definitions**

In this exemption order:

"the Authority"	means the Gas and Electricity Markets Authority established by section 1(1) of the Utilities Act 2000, as amended from time to time
"the Act"	means the Electricity Act 1989, as amended from time to time
"BritNed"	means BritNed Development Limited (Registered No. 04251409; registered office 1-3 Strand, London WC2N 5EH), a company authorised by licence to participate in the operation of the Interconnector
"the Interconnector"	means the high voltage DC electricity interconnector between the Isle of Grain in Great Britain and Maasvlakte in the Netherlands, with respect to:  (i) the capacity of the interconnector as at the date of the interconnector commencing commercial operation; or  (ii) a capacity of 1320 MW,  whichever shall be the less
"the Licence"	means the Electricity Interconnector Licence granted to BritNed under section 6(1)(e) of the Act on [date], such licence authorising BritNed to participate in the operation of a high voltage DC electricity interconnector between the Isle of Grain in Great Britain and Maasvlakte in the Netherlands
"the Regulation"	means Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions



	for access to the network for cross-border exchanges in electricity
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**B. Full description of the interconnector to which this exemption order relates**

This exemption order relates to the high voltage DC electricity interconnector between the Isle of Grain in Great Britain and Maasvlakte in the Netherlands, with respect to (a) the capacity of the interconnector as at the date of the interconnector commencing commercial operation; or (b) a capacity of 1320 MW, whichever shall be the less.

**C. Period**

Subject to section E below, and pursuant to sub-paragraph 4(a) of standard licence condition 12 of the Licence and Article 7(4)(b)(ii) of the Regulation, this exemption order shall come into effect on the date that it is issued and will continue for a period of 25 years from the date that the Interconnector commences commercial operation.

**D. Conditions**

Pursuant to sub-paragraph 4(b) of standard licence condition 12 of the Licence, this exemption order is made subject to the following conditions:

1. The material provided by BritNed to the Authority in respect of this exemption order must be accurate in all material respects.
2. BritNed must notify the Authority within ten days of the Interconnector commencing commercial operation.
3. Should any of the grounds for revocation arise under section E of this exemption order, the Authority may, with the consent of BritNed, amend this exemption order rather than revoke the exemption order.
4. The Authority may, with the consent of BritNed, amend this exemption order where the Authority has been requested to amend the decision to grant this exemption order by the European Commission (such request being made in accordance with Article 7(5) of the Regulation).
5. This exemption order is transferable where the Authority has given its written consent to such a transfer. For the avoidance of doubt, all of the conditions contained in this

exemption order (as amended from time to time) continue unaffected in respect of any person to whom this exemption order may be transferred.

#### **E. Revocation**

Pursuant to paragraph 5 of standard licence condition 12 of the Licence and Article 7(4)(b)(ii) of the Regulation, this exemption order may be revoked in the following circumstances:

1. The Authority may revoke this exemption order where the European Commission has requested (in accordance with Article 7(5) of the Regulation) that the Authority withdraw the decision to grant this exemption order.
2. The Authority may revoke this exemption order where the European Commission has requested (in accordance with Article 7(5) of the Regulation) that the Authority amend the decision to grant this exemption order and BritNed does not agree (under paragraph D4 above) that this exemption order be amended in the manner so requested by the European Commission.
3. The Authority may revoke this exemption order by giving a notice of revocation to BritNed not less than four months before the coming into force of the revocation where:
  - (a) in the Authority's reasonable opinion there is a material change in the degree to which the requirements of sub-paragraphs 6(a), (c), (d), (e) or (f) of standard licence condition 12 of the Licence or Article 7(1)(a), (c), (d), (e) or (f) of the Regulation are met with respect to the Interconnector as the result of any action or omission of BritNed;
  - (b) BritNed has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986 and/or an administrative receiver within the meaning of Article 215 literate 2 of the Bankruptcy Act of the Netherlands, as amended from time to time) of the whole or any material part of its assets or undertaking appointed;
  - (c) BritNed has entered administration under section 8 of and Schedule B1 to the Insolvency Act 1986 and/or has an administration order under Article 218 literate 2 of the Bankruptcy Act of the Netherlands, as amended from time to time, made in relation to it;
  - (d) BritNed is incorporated or has assets in a jurisdiction outside England and Wales and anything analogous to any of the events specified in sub-paragraphs (b) and (c) above occurs in relation to BritNed under the law of any such jurisdiction;

- (e) BritNed is found to be in breach of any national or European competition laws, such breach relating to the Interconnector; or
- (f) there is merger or acquisition in relation to or by BritNed that is, or is likely to be, detrimental to competition.

**Appendix 6 - Draft interconnector licence**

**ELECTRICITY ACT 1989  
SECTION 6(1)(e)**

**ELECTRICITY INTERCONNECTOR LICENCE**

**FOR**

**BRITNED DEVELOPMENT LIMITED**

**PART I. TERMS OF THE LICENCE**

1. This licence, granted under section 6(1)(e) of the Electricity Act 1989 ("the Act"), authorises BritNed Development Limited (a company registered in England and Wales under company number 04251409) ("the licensee") whose registered office is situated at 1-3 Strand, London WC2N 5EH, to participate in the operation of the electricity interconnector specified in Schedule 1 during the period specified in paragraph 3 below, subject to -
  - (a) the standard conditions of electricity interconnector licences referred to in -
    - (i) paragraph 1 of Part II below, which shall have effect in the licence; and
    - (ii) paragraph 2 of Part II below which shall only have effect in the licence if brought into effect in accordance with the provisions of standard condition 12,  
  
subject to such amendments to those conditions, if any, as are set out in Part III below (together "the conditions");
  - (b) the special conditions, if any, set out in Part IV below ("the special conditions"); and
  - (c) such Schedules hereto as may be referenced in the conditions, the special conditions or the terms of the licence.
2. This licence is subject to transfer, modification or amendment in accordance with the provisions of the Act, the special conditions or the conditions.
3. This licence shall come into force on **(date)** and unless revoked in accordance with the provisions of Schedule 2 shall continue until determined by not less than 25 years' notice in writing given by the Authority to the licensee. Such notice must not be served earlier than a date being ten years after the licence comes into force.
4. The provisions of section 109(1) of the Act (service of documents) shall have effect as if set out herein and as if for the words "this Act" there were substituted the words "this licence".
5. Without prejudice to sections 11 and 23(1) of the Interpretation Act 1978, Parts I to IV inclusive of, and the Schedules to this licence shall be interpreted and construed in like manner as an Act of Parliament passed after the commencement of the Interpretation Act 1978.
6. References in this licence to a provision of any enactment, where after the date of this licence -

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- (a) the enactment has been replaced or supplemented by another enactment, and
- (b) such enactment incorporates a corresponding provision in relation to fundamentally the same subject matter,
- shall be construed, so far as the context permits, as including a reference to the corresponding provision of that other enactment.

**The Official Seal of the Gas and  
Electricity Markets Authority  
hereunto affixed is authenticated  
by:-**

.....  
**(DIRECTOR NAME)**

**Authorised in that behalf by the  
Gas and Electricity Markets Authority**

**(effective date)**

**PART II. THE STANDARD CONDITIONS****1. Standard conditions in effect in this licence**

<b>Section A</b>	<b>Section B</b>	<b>Section C</b>	<b>Section D</b>	<b>Section E</b>
Standard condition 1	Standard condition 3		Standard condition 12	Standard condition 15
Standard condition 2	Standard condition 4		Standard condition 13	Standard condition 16
	Standard condition 5		Standard condition 14	Standard condition 17
	Standard condition 6			Standard condition 18
	Standard condition 7			
	Standard condition 8			

**2. Standard conditions not in effect or suspended from operation in this licence**

<b>Section C</b>	<b>Section D</b>
Standard condition 9	Standard condition 10
	Standard condition 11

These standard conditions are not in effect or suspended from operation in this licence in accordance with the terms of standard condition 12 and any exemption order issued by the Authority. These standard conditions may be brought into, or back into, operation in accordance with the terms of standard condition 12 and the provisions of any exemption order issued by the Authority.

Note: A copy of the standard conditions of electricity interconnector licences as determined by the Secretary of State together with subsequent modifications can be inspected at the principal office of the Authority. The above lists are correct at the date of this licence but may be changed by subsequent modifications to the licence.

**PART III. AMENDED STANDARD CONDITIONS PARTICULAR TO THIS LICENCE**

There are no amendments to the standard conditions.



**PART IV. SPECIAL CONDITIONS**

There are no special conditions.

**SCHEDULE 1**

This licence authorises the participation of BritNed Development Limited in the operation of the BritNed interconnector, an electricity interconnector between the Isle of Grain in Great Britain and Maasvlakte in the Netherlands.

**SCHEDULE 2****REVOCATION**

1. The Authority may at any time revoke the licence by giving no less than 30 days' notice (24 hours' notice, in the case of a revocation under subparagraph 1(f)) in writing to the licensee:
  - (a) if the licensee agrees in writing with the Authority that the licence should be revoked;
  - (b) if any amount payable under standard condition 2 (Payments by the Licensee to the Authority) is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the licensee notice that the payment is overdue - provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;
  - (c) if the licensee fails:
    - (i) to comply with a final order (within the meaning of section 25 of the Act) or with a provisional order (within the meaning of that section) which has been confirmed under that section and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 27 of the Act could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined; or
    - (ii) to pay any financial penalty (within the meaning of section 27A of the Act) by the due date for such payment and such payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 27E of the Act could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined;
  - (d) if the licensee fails to comply with:
    - (i) an order made by the court under section 34 of the Competition Act 1998;

- (ii) an order made by the Authority under sections 158 or 160 of the Enterprise Act 2002;
  - (iii) an order made by the Competition Commission under sections 76, 81, 83, 84 and 161 of the Enterprise Act 2002;
  - (iv) an order made by the Secretary of State under sections 66, 147, 160 or 161 of the Enterprise Act 2002;
- (e) if the licensee:
- (i) has not commenced participation in the operation of the interconnector to which this licence relates within five years of the date on which the licence comes into force;
  - (ii) has ceased to participate in the operation of the interconnector to which this licence relates;
- (f) if the licensee:
- (i) is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986, but subject to paragraphs 2 and 3 of this schedule) or has any voluntary arrangement proposed in relation to it under section 1 of that Act or enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
  - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed;
  - (iii) has entered administration under section 8 of and Schedule B1 to the Insolvency Act 1986;
  - (iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or
  - (v) becomes subject to an order for winding-up by a court of competent jurisdiction;
- (g) if the licensee is incorporated or has assets in a jurisdiction outside England and Wales and anything analogous to any of the events specified in sub-paragraph (f) occurs in relation to the licensee under the law of any such jurisdiction; or
- (h) if the licensee is convicted of having committed an offence under section 59 of the Act in making its application for the licence.

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2. For the purposes of sub-paragraph 1(f)(i), section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there was substituted "£100,000" or such higher figure as the Authority may from time to time determine by notice in writing to the licensee.
3. The licensee shall not be deemed to be unable to pay its debts for the purposes of sub-paragraph 1(f)(i) if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by the licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1.