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Subject Consultation BritNed Access Rules – Additional information on compliance to Congestion Management Guidelines

Dear Sir / Madam,

As part of the consultation process BritNed through this letter provides additional information on the compliance of the draft BritNed Access Rules with the Congestion Management Guidelines ("CMG").

The structure of this document is based on the ERGEG Regulation (EC) 1228/ 2003 Compliance Monitoring report with reference E08-ENM-03-05 dated 10 September 2008.

General provisions

BritNed plans to offer a hybrid of explicit auctions for the medium-term and intraday timeframes and implicit auctions at the day-ahead stage. BritNed is carefully considering which types of medium-term auction products it will offer and a decision will be made after this has been properly consulted on with all interested parties.

BritNed will offer open access to interconnector capacity and providing the market participants meet the contractual requirements, shall ensure that it is in a position to accept all appropriate commercial transactions without restrictions.

BritNed supports and shall co-operate with the connected TSOs to relieve congestion to assist in the maintenance of operational security within the relevant grids so that the TSOs can ensure that these grids remain at an economic and efficient level.

BritNed shall agree upon the rules and arrangements for congestion management in advance and implement them as soon as reasonably practicable. BritNed will comply with the network security standards where applicable.

BritNed is currently consulting on its Access Rules, amongst other things, to confirm that it is compliant with the congestion management rules and principles. This will be regularly reviewed over the lifetime of the Interconnector.

Congestion Management Methods

(i) Congestion Management only by Explicit and/or Implicit Auctions

According to Point 2.1 of the CMG the congestion management methods shall be market-based in order to facilitate efficient cross-border trade. Only explicit auctions and implicit auctions are allowed for this purpose and both methods can co-exist at an interconnection. However, for intra-day trade continuous trading may be used.

BritNed plans to offer a hybrid of explicit and implicit auctions. Medium-term capacity allocation will be through explicit auctions. At the day-ahead stage capacity allocation will normally take place through an implicit auction (or explicit auction if the implicit mechanism is unavailable). At the intraday stage multiple explicit auctions will be used with continuous secondary trading possibilities between the intraday nomination gates.

(ii) Long- and Short-Term Transmission Capacity Allocation

Point 2.2 of the CMG postulates that depending on competition, conditions congestion management mechanisms may need to allow for both long- and short-term allocation.

In accordance with the interconnector exemption BritNed's product offering consists of both medium-term and short term transmission capacity allocation and BritNed will not offer product durations longer than one year. BritNed is proposing that as a minimum to provide the following auction products: calendar annual, calendar monthly, daily and intraday.

(iii) Allocation of Available and any Remaining Capacity

According to Point 2.3 of the CMG, a prescribed fraction of the available interconnection capacity plus any remaining capacity not previously allocated and any capacity released by capacity holders from previous allocations shall be allocated by each capacity allocation procedure.

The capacity BritNed is offering in the medium-term auctions will consist of the transmission capacity being made available by BritNed as the Interconnector Operator plus any capacity rights offered for resale by interconnector customers.

Any remaining capacity not previously allocated will be cascaded to a subsequent medium-term auction or the daily implicit auction, whereas for the daily auction all remaining capacity will be made available including any unused capacity rights as a result of the medium term nomination procedure. The offered capacity for the daily auction will be determined taking the netting principle into account. Any remaining capacity following the daily auctions will be offered at the intraday stage.

(iv) Optimising the Degree of Firmness

According to Point 2.4 of the CMG, the TSOs shall optimise the degree to which capacity is firm, taking into account the obligations and rights of the TSOs involved and the obligations and rights of market participants, in order to facilitate effective and efficient competition. Furthermore, a reasonable fraction of capacity may be offered to the market at a reduced degree of firmness, but the exact conditions for transport over cross-border lines shall at all times be made known to market participants.

Under its exemption decision BritNed has been granted flexibility in establishing the degree of firmness. For the medium-term and intraday explicit auctions BritNed is using a mechanism where it reimburses the auction price initially paid for the capacity rights in case of curtailment (except for cases of force majeure). There is no difference in the degree of firmness before and after nomination of the capacity rights.

The daily implicit auction is a firm offering as the energy is traded anonymously as far as BritNed is concerned and the interconnector shipper is acting as the capacity holder for that capacity.

The provisions on curtailment and curtailment reconciliation for the explicit auctions are detailed under Rule D8 and D9 of the BritNed Access Rules.

(v) Firmness of Long- and Medium-Term Capacity Rights, UIOSI / UIOLI

Point 2.5 of the CMG requires that access rights for long- and medium-term allocations shall be firm transmission capacity rights and these rights shall be subject to the UIOSI (Use-It-Or-Sell-It) or UIOLI (Use-It-Or-Lose-It) principles at the time of nomination.

BritNed will apply UIOSI on medium-term capacity entitlements that have not been nominated. The compensation for customers with unused medium-term capacity rights will be derived from the daily auction and capped at the weighted average price of the unused medium-term units the customer has not nominated. In case of a capacity shortage leading to curtailment, it is proposed that unused medium-term units will not be compensated.

The application of UIOLI / UIOSI is not relevant to implicit daily auctions as there is a nomination obligation. In the case that an explicit daily auction is used, then it is proposed that any unused daily units will not be compensated and thus UIOLI will be applied. A similar approach is proposed for the intraday auctions.

The provisions on UIOSI and UIOLI for the explicit auctions are detailed under Rule D6 of the BritNed Access Rules.

(vi) Structure for Capacity Allocation between Different Timeframes

According to Point 2.6 of the CMG, the TSOs shall define an appropriate structure for the allocation of capacity between different timeframes. This may include an option for reserving a minimum percentage of interconnector capacity for daily and intra-day allocation. The allocation procedure shall be subject to review by the respective Regulatory Authorities.

BritNed would like to ensure that to each auction product a sufficient and appropriate proportion of capacity is allocated (except for the intraday stage where only residual capacity will be made available). It is however at BritNed's discretion to decide on the appropriate capacity allocation per auction category.

BritNed is considering a minimum percentage of interconnector capacity to be reserved for the daily stage. At this stage all remaining capacity will be made available. There will not be any capacity reservations for the intraday market. At this stage any remaining capacity will be offered.

(vii) Discrimination Bilateral Transactions and Bidding into Power Exchanges

According to Point 2.7 of the CMG capacity allocation may not discriminate between market participants that wish to use their rights to make use of bilateral supply contracts or to bid into power exchange. The higher value bids, whether implicit or explicit in a given timeframe, shall be successful.

BritNed plans to offer a hybrid of explicit and implicit auctions for several product durations. For these auctions market-based and non-discriminatory rules have been drafted and will be transparently communicated in line with the CMG and the interconnector exemption decision.

(viii) Allocation of All Capacity by Implicit Auction where Efficient Forward Financial Electricity Markets exist

According to Point 2.8 of the CMG in regions where forward financial electricity markets are well-developed and have shown their efficiency, all interconnection capacity may be allocated through implicit auctioning.

Point 2.8 of the CMG is not currently applicable to BritNed given the BritNed auction product offering being proposed.

(ix) Reserve prices

According to Point 2.9 of the CMG establishing reserve prices in capacity allocation methods shall not be allowed. Exemptions are possible for new interconnectors under Article 7 of the Regulation.

BritNed is exempt from this provision and may establish reserve prices for the medium-term explicit auctions.

The reserve pricing mechanism BritNed has proposed is an undisclosed minimum price in an explicit auction for which capacity is being offered. Based on discussions with potential customers, BritNed has revised its reserve price methodology in that it is now proposing the reserve price to be set in relation to costs and no longer in relation to market revenue predictions. Several steps of reserve prices within an explicit auction might be identified, ranging from the marginal cost to the full cost (potentially including a capital expenditure allowance) of running the BritNed Interconnector. BritNed does not propose to set reserve prices for daily explicit auctions (if used) or intraday explicit auctions.

There has been some confusion on reserve pricing in relation to the implicit daily auction. BritNed would like to make clear that it will not be using a reserve price for the daily auction but will however need to recover the GB charges and losses related to flows on the Interconnector to prevent BritNed from flowing at a loss. This means that BritNed will only flow if the spread between the day-ahead markets is sufficient to recover the flow related charges and losses.

The provisions on reserve pricing for the explicit auctions are detailed under Rule C6 of the BritNed Access Rules.

(x) Restrictions for Participation of Market Players in Allocation

According to Point 2.10 of the CMG all potential market participants shall, in principle, be permitted to participate in the allocation process without restriction. To avoid creating or aggravating problems related to the potential use of a dominant position of any market player, the relevant Regulatory and/or Competition Authorities, where appropriate, may impose restrictions in general or on an individual company on account of market dominance.

The BritNed Access Rules do not aim to impose any restrictions on interconnector customers wishing to participate in the allocation process.

(xi) Deadlines and Nomination

According to Point 2.11 of the CMG market participants shall firmly nominate their use of the capacity to the TSOs by the defined deadline for each timeframe. The deadlines shall be set such that TSOs are able to reassign unused capacity for reallocation in the next relevant timeframe – including intra-day sessions.

BritNed's interconnector customers must nominate their use of the explicit interconnector capacity entitlements by a defined deadline for that auction product. This will allow BritNed to reallocate any unused capacity in the next relevant product period. Failure to nominate will result in capacity being subject to UIoSI/UIoLI as applicable.

The provisions on interconnector capacity entitlements, nominations and business process and timings for the explicit auctions and related activities are detailed under Rules D1 and D2 and Schedule 4 of the BritNed Access Rules.

(xii) Secondary Trade

Capacity shall be freely tradable on a secondary basis according to Point 2.12 of the CMG, provided that the TSO is informed sufficiently in advance. Where a TSO refuses any secondary trade (transaction), this must be clearly and transparently communicated and explained to all market participants by that TSO and notified to the Regulatory Authority.

BritNed will operate a secondary market to enable unrestricted trade of interconnector capacity rights. The secondary market means the mechanism to resell capacity or to transfer capacity to another interconnector customer. There will not be any administrative charges for such services.

The provisions on the secondary market, resales and capacity transfers for the explicit auctions are detailed under Rules D3, D4 and D5 of the BritNed Access Rules.

(xiii) Financial consequences in case of failure to honour obligations by those who are responsible

According to Point 2.13 of the CMG the financial consequences of failure to honour obligations associated with the allocation of capacity shall be attributed to those who are responsible for such a failure.

BritNed has put business rules in place, such as UloSI/UoLI and secondary market arrangements, in a way that optimises the utilisation of interconnector capacity. The UloSI compensation mechanism is a positive incentive for interconnector customers to ensure that unused capacity can be reallocated. If interconnector customers fail to utilise their nominations of capacity rights they could ultimately be exposed to an imbalance position in both the GB and NL energy market.

As described under paragraph 2.4 for the medium-term and intraday explicit auctions BritNed is using a curtailment mechanism where it reimburses the auction price initially paid for the capacity rights (except in cases of force majeure).

Coordination

BritNed ensures that its capacity allocation by whatever type of auction product shall be coordinated and implemented with appropriate communication with the relevant TSOs.

BritNed aims to provide different auction products depending on the appetite from market participants and will take into account the developments within both CWE and FUI regions and any other region where required in order to promote fair and efficient competition and cross border trade.

BritNed will continue to work with all regions to develop the day-ahead market.

BritNed is and continues to work with other regions, regulators and TSOs to form an integrated internal electricity market.

Timetable for market operations

(i) Allocation of capacity sufficiently in advance

According to Point 4.1 of the CMG, the allocation of the available transmission capacity shall take place sufficiently in advance. Prior to each allocation, the involved TSOs shall jointly publish the capacity to be allocated, taking into account, where appropriate, the capacity released from any firm transmission rights and, where relevant, associated netted nominations, along with any time periods during which the capacity will be reduced or not available.

BritNed will publish the dates of medium-term auctions in advance (end of year Y-1 for medium-term auctions taking place in year Y). The dates will be set such that the allocation of capacity shall take place sufficiently in advance. The offered capacity will be published several days in advance based on the business rules on netting,

UloSI/ UloLI, etc. BritNed will comply with the information provision on available capacity as defined in the Dutch Grid Code (as this is one of the conditions in the exemption decision).

The provisions on auction rules and business process and timings for the explicit auctions and related activities are detailed under Rule C and Schedule 4 of the BritNed Access Rules.

(ii) Nomination sufficiently in advance

According to Point 4.2 of the CMG, having full regard to network security, the nomination of transmission rights shall take place sufficiently in advance, before the day-ahead sessions of all the relevant organised markets and before the publication of the capacity to be allocated under the day-ahead or intra-day allocation mechanism. Nominations of transmission rights in the opposite direction shall be netted in order to make efficient use of the interconnector.

The nomination procedure has been described in Rule D2 and Schedule 4 of the Access Rules. Schedule 4 describes the business processes and timings for the submission of the medium-term, daily and intraday nomination that have been set in advance of the daily and intraday auctions such that any remaining capacity can be made available in these auctions using the netting principle.

(iii) Intraday allocation sufficiently in advance

Point 4.3 of the CMG requires that successive intra-day allocations of available transmission capacity for day D shall take place on days D-1 and D, after the issuing of the indicated or actual day-ahead production schedules.

BritNed will use multiple explicit auctions with continuous secondary trading possibilities between the intraday nomination gates at the intraday stage. The intraday auctions will be conducted in accordance with Rule C4 and Schedule 4 of the Access Rules.

(iv) Sufficient exchange of data between TSOs before day-ahead operation

According to Point 4.4 of the CMG, when preparing day-ahead grid operation, the TSOs shall exchange information with neighbouring TSOs, including their forecast grid topology, the availability and forecasted production of generation units, and load flows in order to optimise the use of the overall network through operational measures in compliance with the rules for secure grid operation.

BritNed will exchange information with the TSOs operating the interconnected high voltage grids based on bilateral agreements with these parties. BritNed supports and shall work with the TSOs to relieve congestion to maintain operational security of the relevant grids and ensure that the grids remain at an economic and efficient level.

Transparency

In compliance with the CMG and the exemption decision:

- BritNed has agreed and will provide both TSOs (NGET and TenneT TSO) with all relevant data on the Interconnector's availability, use and access;
- All capacity allocation procedures shall be made transparently available to all market participants;
- BritNed shall ensure that it shall comply with all operational and planning security standards imposed on it by the TSOs;
- BritNed shall publish all relevant data concerning its trade on the basis of the best possible forecast at that time;
- BritNed shall publish all available capacity depending on the type of auction and shall take into account all netted day-ahead nominations;
- BritNed shall publish the allocated capacity after each allocation as well as an indication of the price paid. BritNed shall also publish the total capacity used by market time unit after the nomination;
- BritNed shall publish as close as possible to real time aggregated realised commercial and physical flows by market time units;
- BritNed is committed to providing all relevant information to the market in due time for it to negotiate transactions.

Use of congestion income

BritNed has been granted an exemption from article 6(6) of the EC Regulation no. 1228/2003 of the European Parliament and the Council of 26 June 2003 regarding the conditions for access to the network for cross-border exchanges in electricity and for the relevant provisions of the laws of England and Wales and the Netherlands implementing articles 20 and 23 of Directive 2003/54/EC of the European Parliament and the Council of 26 June 2003 regarding common rules for the internal market in electricity and constituting retraction of Directive 96/92/EC.

Yours faithfully,

BRITNED DEVELOPMENT LIMITED



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