



To: electricity generators,
interconnector owners and
operators, suppliers, customer
representatives and other
interested parties

*Promoting choice and value for
all gas and electricity customers*

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Date: 24 February 2011

Dear Colleague

Approval of the access rules for the GB-Netherlands electricity interconnector

This letter is to approve¹ the access rules submitted by BritNed Development Limited (BritNed) to Ofgem on 05 January 2011². The annex to this letter explains the legal basis for our approval.

We welcome the open and transparent approach that BritNed has taken to consult on the access rules and during the approval process. We are confident that we will continue to work constructively with BritNed to address the remaining issues identified below. The consultation and subsequent approval process has led to material improvements in the access rules:

- financial firmness for nominated explicit capacity
- amendment of the use-it-or-sell-it mechanism to pass through all revenue to the original capacity owner
- inclusion of detailed transparency provisions in an additional schedule
- reporting of the reserve price to regulators prior to capacity auctions and ex-post disclosure to the market.

BritNed have committed to future reviews of the access rules, within the first six months of the interconnector's operation and in the third quarter of 2012. The first review will focus on the level of the caps applied to the firmness of explicit capacity³ and the second will be a comprehensive review of the access rules. Ofgem will want to ensure that the most appropriate prices are used in any firmness mechanism and that the impact of any caps is minimised.

¹ Ofgem does not have formal powers to approve BritNed's access rules. However, we anticipate that we will have these powers under the pending Third Package legislation which will come into effect in 2011. Until the Third Package is implemented, we have approved the access rules against the criteria in BritNed's exemption order.

² A copy of the access rules and accompanying documentation has been published alongside this letter for your information. The same documents are also available on BritNed's website: <https://www.britned.com>

³ Firmness of capacity is the compensation that a capacity holder receives in the event its capacity is not available. For example, if there is a forced outage of the interconnector and the capacity holder is not able to utilise the capacity rights it purchased.

If you require additional information regarding Ofgem's role in regulating electricity interconnectors please contact my colleague Olaf Islei (email olaf.islei@ofgem.gov.uk; tel 0207 901 7114)

Yours Sincerely,

Martin Crouch
Partner, European Strategy Team

ANNEX ONE

Legal Basis

On 11 January 2007, the Authority granted BritNed an electricity interconnector licence (the "licence") and an exemption order (the "exemption") for a period of 25 years from the start of commercial operations⁴. The exemption is from standard licence conditions 9, 10, 11 and Article 6(6) of EC Regulation No 1228/2003 (the "Regulation").

In granting the exemption Ofgem committed to monitor the development of and implementation of BritNed's trading arrangements. The exemption also explains the commitments that BritNed made in its exemption application and conditions for its revocation⁵. In its exemption application, BritNed committed to, amongst other things:

- a) make all the capacity available with an access regime that is not materially different from rTPA
- b) operate the interconnector in a way that is compliant with current and future iterations of the EC Congestion Management Guidelines
- c) to offer capacity to the market through implicit and explicit auctions.

If Ofgem observed a material change to the commitments made by BritNed in its application, or a material change in the underlying data provided by BritNed, this would be grounds to review and potentially revoke the exemption. In the event of a material change the we would assess the impact of the change on the degree to which the six tests used to grant the exemption are still met⁶. We therefore assessed the access rules against the exemption conditions.

Third package implementation

Transposition of the Third Package will have a significant impact on the regulatory environment for cross-border infrastructure. The approval of BritNed's access rules does not seek to pre-judge the outcome of the transposition process, which may require future amendments to the access rules to ensure compliance.

⁴ BritNed's licence and exemption order can be found here: <http://epr.ofgem.gov.uk/index.php?pk=folder428613>

⁵ The exemption application and consultation can be found here:
<http://www.ofgem.gov.uk/Markets/WhlMkts/CompanEff/TPAccess/Pages/TPAccess.aspx>

⁶ The six tests are set out in Article 7 of the Regulation.