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Dear Damian,

Approval of modified Access Rules for the BritNed interconnector (BritNed) including a direction to approve pursuant to Standard Licence Condition 11A paragraph 13 of the Electricity Interconnector Licence

On 15 July 2015, BritNed Development Limited¹ submitted proposed modified Access Rules for the BritNed interconnector to the Authority² for approval (the BritNed Access Rules). The Authority is the designated National Regulatory Authority (NRA) for Great Britain under Section 3A of the Utilities Act 2000. The proposed modifications were submitted pursuant to Standard Licence Condition (SLC) 11A of BritNed's electricity interconnector licence³. The BritNed Access Rules set out the general terms and conditions a user must accept to obtain and use transmission capacity on the BritNed interconnector and were most recently approved on 17 December 2014⁴.

After careful consideration, we have decided to approve the proposed modified BritNed Access Rules. We consider that the proposed modified Access Rules will better achieve the relevant access rules objectives⁵.

This letter contains a direction to approve the proposed modified BritNed Access Rules. It also explains the reasons for our approval as required under section 49A of the Electricity Act 1989.

BritNed's proposed modified access rules

The European Network of Transmission System Operators (ENTSO-E) drafted a version of the Forward Capacity Allocation (FCA) European Network Code (ENC)⁶ based on the Framework Guideline published by the Agency for the Cooperation of Energy Regulators

¹ BritNed Development Limited is a joint venture of Dutch TSO TenneT and British TSO National Grid. The company commercially operates the BritNed interconnector, a 1000MW high voltage direct current link between Maasvlakte in the Netherlands and the Isle of Grain in Great Britain.

² The Gas and Electricity Markets Authority. Ofgem is the Office of the Authority. The terms "Ofgem" and "the Authority," "we" and "us" are used interchangeably in this letter.

³ The electricity interconnector licence standard conditions can be found here:
https://epr.ofgem.gov.uk/Content/Documents/Electricity_Interconnector_Standard%20Licence%20Conditions%20Consolidated%20-%20Current%20Version.pdf

⁴ <https://www.ofgem.gov.uk/publications-and-updates/approval-britned-access-rules>

⁵ The relevant access rules objectives are set out in SLC11A paragraph 4. They state that access rules shall be transparent, objective, non-discriminatory and compliant with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency.

⁶ The term European Network Code has been used to describe the new Regulations developed under the Third Package. We use the terms network code, guideline and Regulation interchangeably.

(ACER).⁷ In due course the final version of FCA will be voted on by Member States. Once FCA enters into force it will become a directly applicable Regulation.⁸

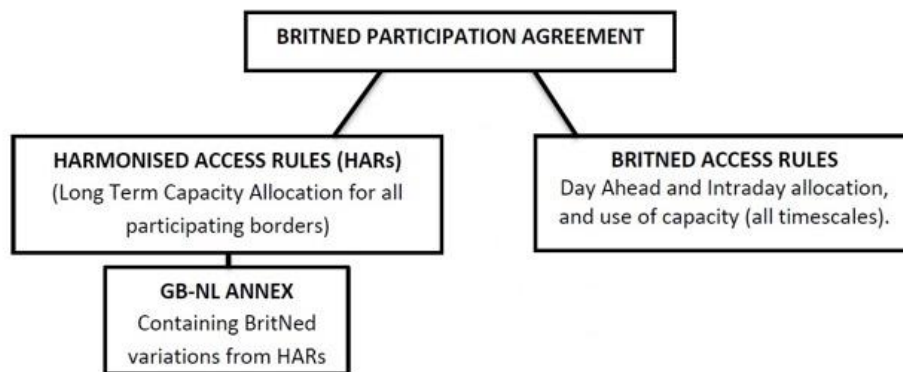
While we cannot be certain what new obligations FCA will place on GB transmission system operators (TSOs), it is expected to require TSOs to develop a set of harmonised allocation rules (HAR).⁹ Several European TSOs, including the GB interconnectors¹⁰, have chosen to implement this requirement as a voluntary pilot project based on an early version of FCA submitted in April 2014 to ACER for its recommendation (the Pilot Project). We cannot guarantee that the final approved version of FCA will contain a requirement for the HAR or, if the HAR requirement remains, that it will have the same requirements as the April 2014 draft used by ENTSO-E to develop the HAR.

The HAR document drafted by TSOs contains procedures for the allocation of long-term transmission rights and the terms on which market participants may participate in explicit auctions for such rights. BritNed proposes to modify its Access Rules in line with the draft HAR document to facilitate participation in the Pilot Project.

Participation in the HAR pilot project requires the following amendments to the BritNed Access Rules:

- Introduction of the HAR document and associated border-specific annex to cover forward capacity allocation;
- Amendment of the existing BritNed Access Rules to remove provisions relating to forward capacity. BritNed's Access Rules will continue to govern auctions for day-ahead and intraday capacity as well as use of capacity across all timescales as this is not in scope of the HAR; and
- Amendment of the Participation Agreement to give contractual effect to the HAR.

The intended contract structure will be as follows, and the key content of each is summarised in BritNed's public consultation¹¹:



Consultation and responses

ENTSO-E conducted a consultation (the ENTSO-E Consultation) on the HAR and border-specific annexes (including BritNed's) between 2 and 30 March 2015. In accordance with SLC 11A BritNed conducted a parallel consultation (the BritNed Consultation) between 2

⁷ http://www.acer.europa.eu/Electricity/FG_and_network_codes/Electricity%20FG%20%20network%20codes/FG-2011-E-002.pdf

⁸ The latest draft of FCA, dated 30 September 2015, is available at: <http://www2.nationalgrid.com/WorkArea/DownloadAsset.aspx?id=39980>

⁹ FCA (30 September 2015 draft) Articles 51-52.

¹⁰ The four operational GB interconnectors are Interconnection France-Angleterre (IFA), BritNed, Moyle and East-West Interconnector (EWIC).

¹¹ <http://britned.com/Participants%20portal/Key%20links%20and%20documents/Regulation%20forms>

March and 2 April 2015 on the proposed changes to its Access Rules required to adopt the HAR.

The ENTSO-E Consultation received nearly 200 comments on the main body of the HAR from 16 different respondents. A public summary of the ENTSO-E Consultation was published.¹² On the basis of market feedback, ENTSO-E made changes to Chapters 1, 2, 3, 4, 7, 8, 9 and 11. Where changes were requested but ENTSO-E did not make them, reasons were provided in the consultation summary. ENTSO-E relayed responses relating to the border-specific annexes to the concerned TSOs; there was one response relating to BritNed, which was also submitted in response to the BritNed Consultation.

The user raised a general concern regarding incompatibility of the proposed changes with Article 8(7) of Regulation 714/2009. BritNed's assessment is that no such incompatibility exists, and it elected to continue with the proposed amendments.

Submission of proposed modified access rules

Following the consultation, and pursuant to SLC 11A paragraph 10 of BritNed's electricity interconnector licence, on 15 July 2015, BritNed submitted the following suite of documents to Ofgem (the Access Rules Submission):

For approval:

- Allocation Rules for Forward Capacity Allocation (HAR)
- Annex 13 – Border-Specific Annex: BritNed Interconnector
- BritNed Access Rules
- Participation Agreement

These four documents forming the proposed modified Access Rules.

For information:

- ENTSO-E consultation summary document including responses and ENTSO-E assessment
- BritNed consultation summary document including response and BritNed assessment
- A summary of the material changes between the existing access rules for Britned and the new proposed modified Britned Access Rules
- Rationale for the border-specific annex (variations from HAR)

BritNed stated in its public consultation document¹³ that it "considers that the proposed amendments will satisfy the 'relevant access rules objectives' (in particular the requirement to be 'compliant with Regulation 2009/714/EC (on cross-border exchanges) and any relevant legally binding decision of the Commission'), by anticipating the HAR elements of the FCA."

BritNed noted in its report submitted to Ofgem that for some TSOs, the target go-live date for the HAR is 1 January 2016. BritNed does not consider that it can meet that target and has instead proposed to implement the HAR by 1 July 2016 due to the lead time required to implement systems changes following regulatory approval of the proposals. BritNed also proposed to provide regular progress updates to the NRAs and to publish a notice to users on its website 30 calendar days prior to the go-live date in accordance with its interconnector licence¹⁴.

Notes and considerations

¹²

https://www.entsoe.eu/Documents/Network%20codes%20documents/NC%20FCA/150630_HAR_assessment_of_comments.pdf

¹³ <http://britned.com/~media/BritNed/Files/Regulatory/BritNed%20%20-%20%20Proposed%20Changes%20to%20BritNed%20Access%20Rules.pdf>

¹⁴ SLC 11A(14)

We note that the draft FCA guideline includes the following objectives¹⁵, which we consider overlap with the relevant access rules objectives:

- *promoting effective long-term cross-zonal trade with long-term cross-zonal hedging opportunities for market participants;*
- *optimising the calculation and allocation of long-term cross-zonal capacity;*
- *providing non-discriminatory access to long-term cross-zonal capacity;*
- *ensuring fair and non-discriminatory treatment of TSOs, the Agency, regulatory authorities and market participants;*
- *respecting the need for a fair and orderly forward capacity allocation and orderly price formation;*
- *ensuring and enhancing the transparency and reliability of information on forward capacity allocation;*
- *contributing to the efficient long-term operation and development of the electricity transmission system and electricity sector in the Union.*

Access Rules shall be “compliant with the Regulation and any relevant legally binding decision of the European Commission and/or Agency”. We consider that not only are the proposed Access Rules compliant with this currently but they also aim to implement expected elements of FCA ahead of legally binding deadlines. We therefore consider that this Pilot Project is a positive step towards facilitation of this objective in due course. As noted above a consultation respondent raised a question about potential incompatibility between the proposed changes and EU law. We do not consider such an incompatibility exists at this time.

We consider that the proposed modified Access Rules are objective and non-discriminatory as the changes will apply equally to, and will provide further trading opportunities for, all market participants.

Although we would ideally like to see a less complex contractual structure (similar to the existing Access Rules which consist of a single document), we consider that the proposed modified Access Rules meet the relevant objective of being transparent. The introduction of harmonised elements of the Access Rules is intended to make it easier for users to trade across interconnectors between GB and other markets, and the same or a similar structure is also expected to be required under FCA in due course.

We recognise that the HAR Pilot Project is an important step towards implementing the FCA requirements for harmonised allocation rules. Nonetheless, we note that it is an interim measure based on a draft version of the network code. The code has undergone substantial revisions and further changes may yet occur during the comitology process. The HAR and associated annexes will therefore need to be revisited to ensure compliance with FCA once the guideline becomes binding and its requirements are clear. We will expect BritNed to comply at all times with all applicable requirements of the ENCs. In particular, further modification may be required to the HAR (in collaboration with other TSOs), the GB-NL annex and the BritNed Access Rules, as well as to other documents as appropriate.

We wish to highlight two elements of particular interest in this regard:

Curtailment/firmness

BritNed proposes to retain its existing curtailment provisions in its border-specific annex rather than harmonising to the level of firmness proposed by ENTSO-E in the HAR. Its rationale for doing so, explained in the access rules submission, is “based on the uncertainty, commercial impact and technical complexity of HAR curtailment provisions and ahead of FCA guideline applying.”

¹⁵ FCA (30 September 2015 draft) Article 3.

We recognise that there is still some uncertainty regarding the specific firmness requirements that FCA will impose, and that there is a certain level of technical complexity involved to implement changes of this nature. Therefore we consider it acceptable for BritNed to retain its current firmness regime until such time as FCA becomes binding, at which time we will expect BritNed to amend its firmness regime to comply with the requirements in accordance with applicable deadlines.

Credit rating and collaterals

We noted that ENTSO-E's consultation summary highlighted a point of contention regarding the most appropriate credit rating requirements for issuers of bank guarantees in favour of the allocation platform in respect of payment for long-term transmission rights allocation. ENTSO-E's consultation summary outlines the various views put forward and concludes that the most appropriate requirement for the HAR is BBB+ by Standard and Poor's Corporation, BBB+ by Fitch or Baa1 by Moody's Investors Service Inc.

BritNed has proposed not to adopt this compromise and instead to retain the A rating currently required under the BritNed Access Rules. BritNed's rationale for this change is that a BBB+/Baa1 credit rating is "outwith National Grid's current credit policy."

We consider that, in the near term, this approach is acceptable as it is consistent with BritNed's existing credit requirements in GB and it may not be practicable to deviate from National Grid's current credit policy. We also recognise that BritNed currently operates on a different allocation platform from the majority of continental European TSOs, and it is reasonable for rules (including credit ratings) to differ among allocation platforms.

Nonetheless, we note that FCA is expected to require all TSOs to propose a single allocation platform for NRA approval¹⁶. If this requirement becomes legally binding, BritNed will need to demonstrate compliance, and that may require it to harmonise its credit rating requirements with the prevailing European approach. We encourage BritNed to remain aware of this issue so that it can take appropriate steps to comply with any requirements of FCA relating to allocation platforms.

The Authority's decision

In light of the above views, and upon review of the Access Rules Submission, consideration of the consultation responses and supporting evidence, and close coordination with the Authority for Consumers and Markets (ACM)¹⁷, we have decided to approve the proposed modified Access Rules. It is our view that the proposed modified Access Rules better meet the relevant access rules objectives.

A direction to this effect, issued in accordance with paragraph 13 of SLC 11A of the electricity interconnector licence, can be found in the annex to this letter.

Next steps

BritNed has proposed to deviate from the ENTSO-E target go-live date for the Pilot Project of 1 January 2016. BritNed considers 1 July 2016 a more appropriate target due to the time needed to implement the relevant systems changes. We recognise that some lead time for systems changes is necessary. We encourage BritNed to arrange for the amended Access Rules to go live as soon as is reasonably practicable, and no later than 1 July 2016. We request BritNed to provide regular updates to Ofgem and ACM regarding its implementation progress, and to publish an informational notice to users on its website no fewer than 28 calendar days ahead of the go-live date.

¹⁶ FCA (30 September 2015 draft) Articles 48-50.

¹⁷ The Netherlands Consumer Authority, the Netherlands Competition Authority (NMa) and the Netherlands Independent Post and Telecommunications Authority (OPTA) joined forces on April 2013, creating a new independent regulator: the Netherlands Authority for Consumers and Markets (ACM).

In light of our decision, we request that BritNed continue to consider modifications it can make to the Access Rules to facilitate implementation of the existing and forthcoming ENCs, including CACM and FCA. We particularly encourage it to consider elements relating to firmness and the allocation platform based on our comments in this letter. We urge BritNed to provide regular updates to its users on the implications of the ENCs and on BritNed's progress in implementing them.

We also expect BritNed to comply with all obligations set out in the GB regulatory framework.

Yours sincerely,

Mark Copley
Associate Partner, Markets

ANNEX

Direction issued to BritNed Development Limited pursuant to paragraph 13 of Standard Licence Condition 11A (Approval of terms for access to the licensee's interconnector) of its Electricity Interconnector Licence

1. This Direction is issued by the Gas and Electricity Markets Authority (the "Authority") pursuant to paragraph 13 of Standard Licence Condition 11A of the electricity interconnector licence (the "Licence") granted or treated as granted under section 6(1)(e) of the Electricity Act 1989 (the "Act") to BritNed Development Limited (the "Licensee").
2. Standard Licence Condition 11A provides that the Licensee shall prepare and submit for approval by the Authority a statement setting out the Access Rules (as defined in the Standard Licence Conditions for electricity interconnector licences).
3. Standard Licence Condition 11A paragraph 4 requires that the Access Rules be transparent, objective, non-discriminatory and compliant with the Regulation (Regulation (EC) No 714/2009 on conditions for access to the network for cross border exchanges in electricity) and any relevant legally binding decision of the European Commission and/or Agency for the Co-operation of Energy Regulators (collectively the "relevant access rules objectives").
4. Standard Licence Condition 11A paragraph 8 requires that the Licensee review its Access Rules at least once in each calendar year and make such modifications to the Access Rules as may be requisite for the purpose of ensuring that the Access Rules better achieve the relevant access rules objectives.
5. Standard Licence Condition 11A paragraph 10 requires the Licensee to take all reasonable steps to ensure that all persons, including those in other Member States that may have a direct interest in the Access Rules are consulted and allow them a period of not less than 28 days within which to make written representations. The Licensee must also furnish to the Authority a report setting out the terms originally proposed for the modification, the representations, if any, made by interested persons and any change in the terms of the modification intended as a consequence of such representations.
6. In accordance with Standard Licence Condition 11A paragraph 10, on 15 July 2015 the Licensee furnished the Authority with a report setting out the Licensee's proposed modifications to the Access Rules. The proposed modifications relate to the voluntary introduction of the Harmonised Allocation Rules as expected to be required under the binding version of the Commission Regulation establishing a guideline on Forward Capacity Allocation in due course.
7. The Authority has decided that the Licensee's proposed modified Access Rules meet the relevant access rules objectives.
8. The Access Rules approved on 17 December 2014 will remain in force until the modified Access Rules approved on the date of this Direction are implemented. The Licensee will implement the modified Access Rules no later than 1 July 2016. In line with SLC 11A(14) the Licensee will publish the modified Access Rules as soon as practicable after they have been approved by the Authority and, at a minimum, 28 days prior to them coming into effect.
9. THE AUTHORITY HEREBY DIRECTS, pursuant to paragraph 13 of Standard Licence Condition 11A of the Licence, that the Licensee's proposed modified Access Rules are approved. This Direction shall have immediate effect and shall remain in effect until such time as the Authority may revoke or vary the Direction in writing upon reasonable notice.
10. This Direction constitutes notice of the Authority's reasons for the decision pursuant to section 49A of the Act.

Mark Copley

Associate Partner, Markets

**Signed on behalf of the Authority and authorised for that purpose by the Authority
on 15 October 2015**