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Date: 14 October 2016

Dear Jan,

**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 2016, BritNed Development Limited<sup>1</sup> submitted proposed modified Access Rules for the BritNed interconnector to the Authority<sup>2</sup> for approval (the BritNed Access Rules). The Authority is the designated National Regulatory Authority (NRA) for Great Britain. The proposed modifications were submitted pursuant to Standard Licence Condition (SLC) 11A of BritNed's electricity interconnector licence<sup>3</sup>. 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 by the Authority on 15 October 2015<sup>4</sup>.

We have approved the modified BritNed Access Rules proposed by BritNed on the basis that the modified Access Rules will better achieve the relevant access rules objectives<sup>5</sup>.

This letter contains a direction approving 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**

On 27 September 2016 European Commission Regulation (EU) No 2016/1719<sup>6</sup> establishing a guideline on forward capacity allocation (FCA) was published in the Official Journal of the European Union. FCA enters into force on 17<sup>th</sup> October 2016.<sup>7</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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](https://epr.ofgem.gov.uk/Content/Documents/Electricity_Interconnector_Standard%20Licence%20Conditions%20Consolidated%20-%20Current%20Version.pdf)

<sup>4</sup> <https://www.ofgem.gov.uk/publications-and-updates/approval-modified-britned-access-rules-2015>

<sup>5</sup> 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.

<sup>6</sup> Regulation (EU) No 2016/1719 establishing a guideline on forward capacity allocation:

<http://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32016R1719&qid=1475008140812&from=EN>

FCA requires TSOs to develop a set of harmonised allocation rules (HAR) for the allocation of long-term capacity. Several European transmission system operators (TSOs), including BritNed, chose to implement this requirement as a voluntary pilot project (the HAR Pilot Project) based on a draft version of FCA. Accordingly, the European Network of Transmission System Operators (ENTSO-E) developed an early version of the HAR (HAR v1). On 15 October 2015 the Authority approved modified Access Rules submitted by BritNed that aligned the BritNed Access Rules with the HAR v1.<sup>8</sup>

Following the successful adoption of FCA at comitology on 30 October 2015, ENTSO-E updated the HAR v1 to HAR v2 to further align it with the post-comitology version of FCA. BritNed has submitted proposed modified Access Rules which seeks to align its' Access Rules with the HAR v2.

This requires a number of changes, including to the:

- BritNed Access Rules - to update article numbering in order to ensure correct cross-references to article numbers in HAR v2; and
- BritNed Border Specific Annex - to reflect additional BritNed specific variations from the harmonised allocation rules.

### **Consultation and responses**

ENTSO-E conducted a consultation (the ENTSO-E Consultation) on the HAR v2 and border-specific annexes (including BritNed's) between 28 April 2016 and 18 May 2016. In accordance with SLC 11A BritNed conducted a consultation ("the BritNed Consultation") between 17 May and 13 June 2016 on the proposed changes to its Access Rules that are required to adopt the HAR v2.

The ENTSO-E Consultation received nearly 70 comments on the main body of the HAR 2 from 10 different respondents. A public summary of the ENTSO-E Consultation was published. This summary also indicates where ENTSO-E has made changes to relevant chapters in light of responses received. Where changes were requested but ENTSO-E did not make them, reasons were provided in the consultation summary. BritNed did not receive any comments in response to the BritNed Consultation.

### **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:*

- BritNed Access Rules
- Annex 12 – Border-Specific Annex: BritNed Interconnector
- Allocation Rules for Forward Capacity Allocation (HAR v2)

These documents forming the proposed modified Access Rules.

*For information:*

- ENTSO-E consultation summary document including responses and ENTSO-E assessment; and
- Tracked changed versions of the Access Rules Submission documents

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<sup>7</sup> FCA comes into force 20 days after publication in the OJEU (Article 64 of FCA)

<sup>8</sup> October 2015 approval of BritNed Access Rules:

[https://www.ofgem.gov.uk/sites/default/files/docs/2015/10/britned\\_decision\\_letter.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2015/10/britned_decision_letter.pdf)

We note that BritNed considers the “proposed amendments 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 Harmonised Allocation Rules element of the Forward Capacity Allocation Guideline.”

### **Notes and considerations**

We note that the objectives of allocation of forward capacity as specified in FCA broadly overlap with the relevant access rules objectives.<sup>9</sup>

The relevant access rules objectives require that 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 with a view to ensuring compliance at the point the deadlines expire.

We consider that the proposed modified access rules are objective and non-discriminatory as the changes will apply equally to, and will facilitate trade for, all market participants.

Although we would ideally like to see a less complex contractual structure, 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 required under FCA.

We recognise that the HAR Pilot Project is an important step towards implementing FCA requirements for harmonised allocation rules. As FCA enters into force on 17 October 2016, BritNed will need to revisit HAR v2 (in collaboration with other TSOs), the GB-NL annex and the BritNed Access Rules to ensure it is fully compliant with relevant requirements of FCA.

### **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) 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**

We expect BritNed to arrange for the amended Access Rules to go live as soon as is reasonably practicable, and no later than 1 January 2017.

We request BritNed to provide regular updates to Ofgem regarding its implementation progress in the interim, and to publish an informational notice to users on its website no fewer than 28 calendar days ahead of the go-live date.

In light of this approval and the imminent entry into force of FCA, we request that BritNed consider what further modifications it needs to make to the Access Rules to ensure it is fully compliant with relevant requirements of FCA, within the timescales specified in FCA.

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<sup>9</sup> Article 3 of FCA

We also request BritNed to continue to consider modifications necessary to facilitate implementation of the existing and forthcoming ENCs.

Yours sincerely,

Stephen Beel  
**Partner, Competitive Networks**

## 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") in relation to the BritNed interconnector.
2. Standard Licence Condition 11A of the licence provides that the Licensee shall prepare and submit for approval by the Authority a statement setting out the Access Rules being the methodologies used to establish terms and conditions for access to and use of BritNed interconnector (but not including those related to charges).
3. Standard Licence Condition 11A, paragraph 4, requires that the Access Rules must 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 2016 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 early introduction of the Harmonised Allocation Rules as expected to be required under Commission Regulation (EU) No 2016/1719 establishing a guideline on Forward Capacity Allocation.
7. The Authority has decided that the Licensee's proposed modified Access Rules meet the relevant access rules objectives for the reasons set out in the letter notifying approval to the Licensee dated 14 October 2016.
8. The Access Rules approved on 15 October 2015 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 January 2017. In line with Standard Licence Condition 11A, paragraph 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. Pursuant to Standard Licence Condition 11A, paragraph 13, of the Licence the Licensee's proposed modified access rules are approved by the Authority. 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.

Stephen Beel

**Partner, Competitive Networks**

**Signed on behalf of the Authority and authorised for that purpose by the Authority  
on 14 October 2016**