

Joint Opinion of the Authority for Consumers & Markets (Netherlands) and the Gas and Electricity Markets Authority (Great Britain) on the Access Rules for the BritNed interconnector in the event that Great Britain no longer participates in single day-ahead market coupling

This document sets out the Joint Opinion (the “Joint Opinion”) of the National Regulatory Authorities (“NRAs”) in the Netherlands and Great Britain (“GB”) on the Access Rules for the BritNed interconnector (“BritNed”) in the event that GB no longer participates in single day-ahead market coupling as a result of the United Kingdom (“UK”) leaving the European Union (“EU”) without a withdrawal agreement (thereafter “GB decoupling”). The concerned NRA in the Netherlands is the Authority for Consumers & Markets (“ACM”) and the concerned NRA in GB is the Gas and Electricity Markets Authority (“the Authority”), whose administrative functions are carried out by the Office of Gas and Electricity Markets (“Ofgem”).

BritNed is a 1,000MW direct current cable connecting the Dutch transmission system to the system of Great Britain (“GB”) between Maasvlakte in the Netherlands and the Isle of Grain in the UK. BritNed Development Limited (“BDL”) is a joint venture of Dutch NLink International B.V. – a subsidiary of TenneT Holding B.V.¹ - and British TSO National Grid, and commercially operates the BritNed interconnector.

On 29 March 2017, the UK notified its intention to leave the EU, pursuant to Article 50 of the Treaty on European Union, thus officially initiating the process of withdrawal from the EU (hereafter “Brexit”). Changes on the legislative and regulatory frameworks governing the operation of BritNed should be expected in the event that the UK leaves the EU without a withdrawal agreement. The ACM and Ofgem emphasise the need for the continued operation of BritNed to allow for trades in all timeframes between the Netherlands and the UK to continue, regardless of the Brexit outcome.

As a contingency measure, BDL has prepared, consulted on and submitted proposed modifications to the BritNed Access Rules to the NRAs for their approval. The main modifications are as follows:

- BDL proposes to continue to allocate long-term capacity on BritNed in the form of physical transmission rights (“PTR”) *via* explicit auctions on the BritNed allocation platform. However, the PTR regime and firmness provisions in case of capacity curtailment are adapted to take account of the impacts of no longer being part of SDAC, in particular the absence of a reference day-ahead price spread between GB and the Netherlands.
- BDL proposes to allocate day-ahead capacity *via* explicit auctions on the BritNed allocation platform.
- BDL proposes to continue to allocate intraday capacity *via* explicit auctions on the BritNed allocation platform.

The present document forms the basis for the NRAs’ national approval processes on the proposed BritNed Access Rules in case of GB decoupling. It is divided into three chapters:

1. Chapter 1: General context
2. Chapter 2: BritNed Access Rules in the event of GB decoupling
3. Chapter 3: NRAs’ decision on BritNed Access Rules in the event of GB decoupling

¹ TenneT Holding B.V. is the holding company of the Dutch TenneT TSO B.V.

1. CHAPTER 1: GENERAL CONTEXT

1.1 Potential impacts of Brexit on BritNed allocation mechanisms

On 29 March 2017, the UK notified its intention to leave the EU, pursuant to Article 50 of the Treaty on European Union. Consequently, the UK is scheduled to leave the EU on 29 March 2019 (24:00 CET). As part of the UK government's preparations for the withdrawal from the EU, the European Union (Withdrawal) Act 2018 was granted Royal Assent on 26 June 2018². The Act will serve to convert EU law that the UK is subject to at the moment, into UK law.

The UK government has agreed the full legal text of the withdrawal agreement, concluded on 13 November 2018 with the EU³, and remains confident that this will provide the basis for a smooth and orderly exit. If the withdrawal agreement is implemented, an implementation period will run until 31 December 2020. During this time, the ACM and Ofgem's assumption is that EU law would continue to apply to the UK and that the consequential changes to the BritNed Access Rules, as described in this Joint Opinion, would not be required nor implemented by the involved TSOs.

As a contingency measure however, BDL has submitted proposed modifications to the BritNed Access Rules to ACM and Ofgem, as the relevant NRAs, for their approval. The aim of the proposed modifications is to:

- a) ensure that the current allocation mechanisms evolve to remain operable; and
- b) take into account the scenario where the UK leaves the EU without the entry into force of a withdrawal agreement and consequently the scenario of GB decoupling.

This Joint Opinion therefore elaborates the NRAs' position on the set of Access Rules that would apply in the event of GB decoupling (thereafter "BritNed Access Rules in case of GB Decoupling").

1.2 In case of Brexit without the entry into force of a withdrawal agreement, EU legislation shall no longer be applicable to the UK and the basis for decisions on BritNed Access Rules shall lie within national legislation

In the event that the UK leaves the EU without the entry into force of a withdrawal agreement, EU legislation such as Commission Regulation (EU) 2015/1222 of 24 July 2015 on capacity allocation and congestion management ("the CACM guideline") and Commission Regulation (EU) 2016/1719 of 26 September 2016 on establishing a guideline on forward capacity allocation ("the FCA guideline") will cease to apply to the UK. Even though these regulations are retained by application of the European Union (Withdrawal) Act 2018, in the event that no withdrawal agreement has entered into force on 29 March 2019, these regulations will be revoked by application of subsequent regulations⁴.

The CACM guideline sets out the legal framework that underpins GB's participation in the single day-ahead coupling ("SDAC") and in the single intraday market coupling. The FCA guideline sets out the legal framework for the harmonised allocation of cross-zonal capacity in the forward electricity markets and the participation in a single allocation platform.

The current Access Rules must therefore evolve to take into account that the CACM guideline and the FCA guideline will cease to apply to the infrastructure connecting the Netherlands to the UK. In case of GB decoupling, the BritNed Access Rules will hence constitute the new regulatory framework applicable to the

² See the EU Withdrawal Act available here : <http://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>

³ See the Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as agreed at negotiators' level on 14 November 2018 and see the Political Declaration setting out the framework for the future relationship between the European and the United Kingdom, available respectively at: https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement_0.pdf and <https://www.consilium.europa.eu/media/37059/20181121-cover-political-declaration.pdf>

⁴ Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019

allocation of capacity between the Netherlands and GB. The BritNed Access Rules have been developed according to well-known processes already identified in the CACM and FCA guidelines, mostly as a fallback procedure for the normal SDAC.

The BritNed Access Rules in case of GB decoupling will be adopted on the basis of national legislation. In the Netherlands, the legal basis for approval of the BritNed Access Rules will change if the UK leaves the European Union without a withdrawal agreement. A new competence for the ACM to decide on the BritNed Access Rules will immediately come into force on 30 March 2019, 00:00 CET (*Besluit grensoverschrijdend net Nederland - Verenigd Koninkrijk na Brexit*)⁵. The ACM will take its decision the moment that the *Besluit grensoverschrijdend net Nederland - Verenigd Koninkrijk na Brexit* comes into force. On the GB side the legal basis for the approval of Access Rules will be through the Standard Licence Condition 11A of the GB electricity interconnector licence⁶.

1.3 BritNed Access Rules in case of GB decoupling have been consulted and similar processes have been conducted on other interconnected borders

In accordance with the applicable legal and regulatory framework, BDL organised a public consultation on the proposed amendments to BritNed Access Rules, which took place between 15 November 2018 and 14 December 2018⁷.

The interconnectors between the UK and Belgium (Nemo Link) and between the UK and France (IFA) similarly organised a public consultation on a set of amendments to their own set of Access Rules to take into account the scenario of GB decoupling.

⁵ Besluit houdende regels met betrekking tot de werking en exploitatie van een andsgrensoverschrijdend net dat de grens met het Verenigd Koninkrijk overschrijdt en de beheerder van dat net in verband met de terugtrekking van het Verenigd Koninkrijk uit de Europese Unie, not published yet.

⁶ Standard Licence Condition 11A of the GB Electricity Interconnector Licence:
https://epr.ofgem.gov.uk/Content/Documents/Electricity_Interconnector_Standard%20Licence%20Conditions%20Consolidated%20-%20Current%20Version.pdf

⁷ BritNed's consultation page can be accessed here: <https://www.britned.com/consultations/>

2. CHAPTER 2: BRITNED ACCESS RULES IN THE EVENT OF GB DECOUPLING

2.1 Current allocation mechanisms on BritNed

Currently, interconnection capacity on BritNed is allocated by BDL along three timeframes: long-term (explicit allocation), day-ahead (implicit allocation) and intraday (explicit allocation)⁸. The underlying allocation mechanisms, which are based on European or national legislation are described in the following paragraphs.

Long-term allocation process

Long-term capacity on BritNed is currently allocated in the form of physical transmission rights pursuant to the Use-It-Or-Sell-It (“UIOSI”) principle *via* explicit auctions. The Channel Regional Design of long-term transmission rights (LTTRs)⁹, in accordance with the FCA Guideline, describes the type of transmission rights to be allocated as well as the timeframes and types of product. In the event that PTR holders do not nominate their PTR ahead of the day-ahead firmness deadline, they are entitled to compensation based on the day-ahead reference price differential between the two bidding zones’ prices (thereafter “market spread”). The allocation is done according to the Harmonised Allocation Rules¹⁰ (“HAR”), and Annex 12 to the Allocation Rules, the “Border specific annex: BritNed Interconnector”.

Day-ahead allocation process

The “BritNed Access Rules – 2018”¹¹ presently govern capacity allocation in the day-ahead and intraday stages.

At the day-ahead stage, capacity is allocated implicitly via the SDAC. The terms, conditions and methodologies that govern the SDAC are set out in or made under the CACM Guideline.

Under Chapters 4 and 5 of the CACM Guideline, the SDAC uses an algorithm called the ‘EU Pan-European Hybrid Electricity Market Integration Algorithm’ (“EUPHEMIA”) to match energy demand and supply for all the periods of a single day at once while taking into account the available network capacity. EUPHEMIA returns the market clearing prices, the matched volumes and the net position of each bidding zone.

Intraday allocation process

At the intraday stage, capacity is currently allocated explicitly on the BDL Allocation Platform.

⁸ Implicit allocation involves the sale of the transmission capacity (i.e. the right to flow electricity) and of electrical energy as a single product. In contrast, transmission capacity and electrical energy are sold separately and independently from each other in explicit allocation. For example, a GB market participant wishing to import 10MW of electricity from the Netherlands for instance needs to buy i) the right to transmit 10MW over the BritNed interconnector in the appropriate direction and ii) 10MW of electricity from a generator in the Netherlands.

ACM’s decision is available here: <https://www.acm.nl/nl/publicaties/goedkeuring-regionaal-ontwerp-transmissierechten-britned-fca-verordening>

And Ofgem’s decision is available here: <https://www.ofgem.gov.uk/publications-and-updates/ofgem-decision-approve-channel-regional-design-long-term-transmission-rights-proposal-under-fca>

¹⁰ Decision of the Agency for the Cooperation of Energy Regulators No 03/2017 of the electricity Transmission System Operators’ proposal for Harmonised Allocation Rules for Long-Term Transmission Rights, available at:

https://acer.europa.eu/Official_documents/Acts_of_the_Agency/Individual%20decisions/ACER%20Decision%2003-2017%20on%20HAR.pdf

¹¹ The BritNed Access Rules – 2018 are available at:

https://www.britned.com/documents/41/BritNed_Access_Rules_2018_Approved.pdf

The CACM Guideline sets as an objective for the intraday allocation process to take place across borders on the basis of continuous energy trading with implicit capacity allocation. However, this form of intraday market coupling has not been implemented to date on the border between the Netherlands and the UK.

2.2 BDL's proposed BritNed Access Rules in case of GB decoupling

As part of their preparations to ensure the continued operation of BritNed in the event of GB decoupling, BDL has developed a set of BritNed Access Rules covering all allocation timeframes (long-term, day-ahead and intraday) that would apply in the event of GB decoupling, pending approval from the ACM and Ofgem. They formally submitted this set within a single document to the ACM and Ofgem ("BritNed Access Rules – January 2019") on 19 February 2019. The ACM and Ofgem identified some editorial issues, which were dealt with by BritNed in an updated version. This document is organised into three sections:

- BritNed Access Rules – January 2019
- Annex 1: BritNed Allocation Rules
- Annex 2: Border Specific Annex

In the event that the UK leaves the EU without the entry into force of a withdrawal agreement, the BDL Allocation Platform will remain in use for allocation of capacity in all timeframes.

The main changes introduced in the BritNed Access Rules in case of GB decoupling compared to the current allocation mechanisms in each timeframe are described in the following paragraphs.

Long-term allocation process

The main principles governing Long Term Transmission Rights remain unchanged. BDL proposes to continue to allocate long-term capacity on BritNed in the form of PTRs *via* explicit auctions. They will continue to offer PTRs pursuant to the UIOSI principle for several timeframes and types of product, as described in Schedule 4 of the BritNed Access Rules.

GB decoupling will have an effect on the reallocation of long-term capacity in the day ahead timeframe and thereby on the UIOSI and firmness provisions, in particular the absence of a reference day-ahead price spread. More specifically, Article 48 of the BritNed Long Term Allocation Rules provides that PTR holders who have not nominated their PTR, prior to the corresponding daily auction, are entitled to remuneration equal to the marginal price of the day-ahead explicit auction multiplied by the non-nominated amount. Article 61 provides that in the case of curtailment due to *force majeure* after the firmness deadline, PTR holders are entitled to compensation equal to the price paid for that capacity during the explicit allocation process. Furthermore, both opening times and gate closure times for nomination, as described in Schedule 2, are one hour earlier. References to Financial Transmission Rights have (partly) been removed from the Allocation rules since BritNed only offers Physical Transmission Rights.

Day-ahead allocation process

Upon entry into force, the BritNed Access Rules will require the explicit allocation of day-ahead capacity *via* explicit auctions on the BDL Allocation Platform.

More specifically, "Section C: Auction Rules" of the proposed BritNed Access Rules details the procedural elements of the explicit allocation process. Schedule 2, "Business Rules for Use of Physical Transmission Rights" provides details of the Day-Ahead Business Process for Explicit Day Ahead Auction (Timings are indicative). One day ahead auction (explicit) opens at 09:00 and closes at 09:30 on day D-1 (or at any other time specified by the allocation platform in the relevant auction specification or after publication of the auction specification). Provisional results are published at 09:35 on D-1, final results are published at 09:40.

The Allocation Platform will notify each Unit Holder of its Day Ahead Transmission Rights for Contract Day D in each Direction at 10:30 hrs on the day D-1 (or at any other time specified in advance by the Allocation Platform). Unit Holders can submit Day Ahead Mid North Sea Nominations of Day Ahead Units for the Contract Day D, from opening of the gate for Day Ahead MNNs at 11:00hrs on the day D-1 until Day Ahead MNNs gate-closure at 13:00 hrs on day D-1 (or at any other time specified in advance by the Allocation Platform).

Intraday Allocation Process

There will be no change to the intraday allocation process in the event of GB decoupling.

Unlike at the day-ahead stage, explicit allocation at the intraday stage is not governed by terms, conditions and methodologies set out under the CACM Guideline, therefore the current arrangements shall remain unchanged should the UK leave the EU without the entry into force of a withdrawal agreement.

2.3 Feedback of public consultation

BDL submitted the draft BritNed Access Rules in the event of GB decoupling to public consultation via their website between 15 November 2018 and 14 December 2018. A consultation report was included to the formal submission of the BritNed Access Rules that summarises stakeholders' responses and details BDL's position on the points raised.

BDL received nine responses with comments covering:

- *Timing of the day-ahead explicit auction*, four respondents opposed suggested that the day-ahead auction timing should be harmonised on all channel interconnected borders and that the day-ahead explicit auction results should be published at 9:00 CET instead of 9:35 CET. BDL has made this change and harmonised its day-ahead explicit auction timings with Nemo Link.
- *Testing of the day-ahead explicit auctions with market participants*, one respondent requested that tests of the day ahead explicit auctions should start as soon as possible to allow time for parties to adapt. BDL confirmed that testing would commence in the week starting 14 January 2019.
- *Clarifications of proposed rules for firmness for long-term and day-ahead capacity*, one respondent requested clarification of what would market participants receive if the interconnector capacity was not available as there would no longer be a market spread. BDL confirmed that there would no longer be a market spread, and therefore for the daily-explicit auctions market participants would receive the clearing price.
- *Changes to nomination deadlines*, one respondent requested that the nomination deadline between 12:30 and 13:30 be extended to 14:00 in order to provide market participants more time to nominate the day ahead flow. BDL took this request into consideration, but due to BDL's own submission deadline they were not able to extend the deadline.
- *Suggested improvements to intraday access*, one respondent suggested more nomination windows closer to real-time in order to re-optimize the BritNed interconnector in the most efficient way. BDL has taken this suggestion into consideration, and will take it into account if they choose to develop their explicit intraday solution in the future.
- *The entry into force of these BritNed Access Rules*, one respondent asked for a more detailed specification of the timelines which these BritNed Access Rules would enter into force. BDL has clarified that they plan to issue a separate notice to market participants on the timing of entry into force of BritNed Access Rules and operational procedures.
- *The organisation of a workshop by National Grid Interconnectors* to explain all the details across the portfolio of NG interconnectors was suggested by one respondent. BDL suggested this request was

raised with National Grid Interconnectors and was out of the scope of the consultation on Access Rules.

The ACM and Ofgem note that Annex 1, the proposed BritNed Allocation Rules, has not been formally consulted upon. The changes to the Allocation Rules were identified once BritNed's consultation was complete, nevertheless it is necessary for NRAs to take these proposed modifications into account when assessing the proposed BritNed Access Rules. In this regard, the NRAs consider that the proposed changes are necessary to reflect the consequences of GB decoupling and thereby ensure the continued allocation of long-term capacity in the event of GB decoupling.

2.4 NRAs' analysis of proposed BritNed Access Rules

Both regulators agree with merging the BritNed Access Rules and the Allocation rules into a single document. References to European law have been removed since it no longer applies to BritNed.

BritNed Long-Term Allocation

The ACM and Ofgem have assessed the proposed changes to the allocation of LTTRs. Both regulators agree with a continued application of the slightly modified content of the HAR and the BritNed Border Specific Annex, but then as part of the Allocation Rules. Remuneration for the PTRs sell-it regime and compensation in case of capacity curtailment will be based on the marginal price of the explicit day ahead auction rather than the market spread. Since this is an important change for the market, the ACM and Ofgem are of the opinion that BDL should, at the earliest possible opportunity, evaluate the working of the rules on remuneration and compensation and its impact on the market.

BritNed Day-Ahead and Intraday Allocation

The ACM and Ofgem have assess the proposed changes in day-ahead allocation. If the amended BritNed Access Rules proposed are implemented, explicit allocation shall apply at the day-ahead stage (as was the case prior to the introduction of SDAC on the Netherlands-GB border), replacing implicit allocation. Explicit allocation will remain unchanged at the intraday stage.

Conclusion

Ofgem and the ACM consider that the proposed BritNed Access Rules meet the requirements of the respective national legislation. They are reasonable, objective and non-discriminatory as the changes will apply equally to, and will facilitate trade for, all market participants. We also consider the proposed modified BritNed Access Rules to meet the relevant objective of being transparent. They furthermore facilitate trade across BritNed in case of GB decoupling and thereby promote competition in the electricity market.

3. CHAPTER 3: NRAS' DECISION ON BRITNED ACCESS RULES IN THE EVENT OF GB DECOUPLING

3.1 NRAs approve BritNed's Access Rules

Based on their common analysis and evaluation of the BritNed Access Rules in case of GB decoupling, including responses to public consultation, the ACM and Ofgem agree that they can be approved. This agreement is intended to constitute the basis on which the ACM and Ofgem will each subsequently make national decisions.

Following national decisions by the ACM and Ofgem, BDL will be required to publish the BritNed Access Rules in case of GB decoupling on their respective websites and to ensure their entry into force according to the planning decided by the NRAs in Chapter 3.2 of this Joint Opinion.

3.2 Effectiveness date

The BritNed Access Rules submitted by BDL to the ACM and Ofgem on 19 February 2019, shall apply in the event that GB no longer participates in single day-ahead market coupling as a result of the UK leaving the EU without a withdrawal agreement. In that case, these BritNed Access Rules shall apply from the day following the UK's departure from the EU.

Since the UK notified its intention to leave the EU on 29 March 2019, pursuant to Article 50 of the Treaty on European Union, the UK is scheduled to leave the EU on 29 March 2019 (24:00 CET), unless that period is extended by the European Council in agreement with the UK. As such, unless the period is extended or a withdrawal agreement enters into force, the first day-ahead explicit auction would take place on 30 March 2019 for delivery on 31 March 2019.

3.3 Further considerations

The ACM and Ofgem acknowledge that the event of GB decoupling means considerable change for all market participants. Both regulators therefore agree that the impact of the proposed BritNed Access Rules in this altered market situation will have to be considered in the next review of the BritNed Access Rules. This includes at least an evaluation of the rules concerning the remuneration for the physical transmission rights sell-it regime and compensation in case of capacity curtailment.

Lastly, the ACM and Ofgem ask BDL to continue to review its Access Rules. Any modifications required to improve the Access Rules should be submitted to the relevant NRAs.