

## **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 Regulatory Authorities (“RAs”) in the Netherlands and Great Britain (“GB”) on the modified 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 deal (hereafter “GB decoupling”). The concerned RA in the Netherlands is the Authority for Consumers & Markets (“ACM”) and the concerned RA 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 Interconnector Holdings Ltd. BDL 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 the 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 interconnectors should be expected in the event that the UK leaves the EU without a deal. ACM and Ofgem emphasise the need for the continued operation of Britned to allow for trades in all timeframes between the Netherlands and Great Britain to continue, regardless of the Brexit outcome.

On 14 March 2019<sup>2</sup>, ACM and Ofgem agreed on a joint opinion on the Access Rules which would apply to BritNed in the case of GB decoupling (“Access Rules in case of GB decoupling”). On 15 March 2019<sup>3</sup>, Ofgem approved these rules. ACM has not approved this version of the Access Rules rules since its competence to decide on the Access Rules in case of GB decoupling will only come into force at the point of Exit without a

<sup>1</sup> TenneT Holding B.V. is the holding company of the Dutch TenneT TSO bv.

<sup>2</sup> The joint opinion can be accessed at the following address:

[https://www.ofgem.gov.uk/system/files/docs/2019/03/approval\\_of\\_modified\\_access\\_rules\\_for\\_the\\_britned\\_interconnector\\_to\\_apply\\_in\\_the\\_event\\_that\\_the\\_uk\\_leaves\\_the\\_eu\\_without\\_a\\_deal.pdf](https://www.ofgem.gov.uk/system/files/docs/2019/03/approval_of_modified_access_rules_for_the_britned_interconnector_to_apply_in_the_event_that_the_uk_leaves_the_eu_without_a_deal.pdf).

<sup>3</sup> Ofgem’s decision to approve the Access Rules in case of GB decoupling for market coupling is available at:

<https://www.ofgem.gov.uk/publications-and-updates/approval-modified-access-rules-britned-interconnector-apply-event-uk-leaves-eu-without-deal>

deal<sup>4</sup>. BDL has proposed modifications to the Access Rules in case of GB decoupling to further improve them (“modified Access Rules in case of GB decoupling”).

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

1. General context
2. The modified Access Rules in case of GB decoupling
3. RAs’ decision on the modified Access Rules in case of GB decoupling.

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<sup>4</sup> Since Brexit was postponed and BDL has submitted a new version of the Access Rules in case of GB decoupling (“modified Access Rules in case of GB decoupling”), ACM will not approve the Access Rules in case of GB decoupling that Ofgem on 15 March 2019.

## 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. The UK is currently scheduled to leave the EU on 31 October 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 2018<sup>5</sup>. The Act will serve to convert EU law that the UK is subject to at the point of Exit, into UK law.

As a contingency measure however, BDL submitted Access Rules in case of GB decoupling in February 2019. These Access Rules were approved by Ofgem. BDL proposed modifications to these Access Rules.

This Joint Opinion therefore elaborates the RAs' position on the modified Access Rules in the case of GB decoupling.

### 1.2 Legislation in the event of GB decoupling

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<sup>6</sup>, in the event the UK leaves the EU without a deal, these regulations will be revoked by application of subsequent regulations<sup>7</sup>.

The CACM guideline sets out the legal framework that underpins GB's participation in the single day-ahead market 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.

To take into account that the CACM guideline and the FCA guideline would cease to apply to the infrastructure connecting the Netherlands to GB, ACM and Ofgem previously agreed a joint opinion on the Access Rules in case of GB decoupling, which would thus constitute the new regulatory framework

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<sup>5</sup> See the EU Withdrawal Act available here: <http://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>.

<sup>6</sup> The European Union (Withdrawal) Act 2018 was granted Royal Assent on 26 June 2018 and will serve to convert EU law that the UK is subject to at the point of Exit, into UK law. See: <http://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>

<sup>7</sup> See the Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019 here: <http://www.legislation.gov.uk/uksi/2019/532/contents/made>.

applicable to the allocation of capacity between the Netherlands and GB. These Access Rules were developed according to well-known processes already identified in the CACM and FCA guidelines, mostly as fallback for the existing arrangements under SDAC. These Access Rules were adopted on the basis of national legislation in the UK and the same process would have been followed in the Netherlands following the point of Exit without a deal.

The modified Access Rules in case of GB decoupling will also be adopted on the basis of national legislation. In the Netherlands, the legal basis for approval of the modified Access Rules will change if the UK leaves the European Union without a deal. A new competence for ACM to decide on the modified Access Rules will immediately come into force on 1 November 2019, 00:00 CET (*Besluit grensoverschrijdend net Nederland - Verenigd Koninkrijk na Brexit*)<sup>8</sup>. ACM will make its decision at the point that the *Besluit grensoverschrijdend net Nederland - Verenigd Koninkrijk na Brexit* comes into force. On the GB side the legal basis for the approval of the modified Access Rules will be through the Standard Licence Condition 11A of the GB electricity interconnector licence<sup>9</sup>.

### 1.3 BritNed Access Rules Consultation

In accordance with the applicable legal and regulatory framework, BDL organised a public consultation on the modified Access Rules in case of GB decoupling, which took place between 26 July 2019 and 23 August 2019<sup>10</sup>. Following this consultation, BDL submitted the modified Access Rules in case of GB decoupling to Ofgem on 28 August 2019 and to ACM on 29 August 2019.

BDL submitted an updated version of the modified Access Rules in case of GB decoupling to Ofgem on 15 October 2019 and to ACM on 17 October 2019, making clarifications to some articles. In addition BDL made revisions to the intraday auction schedule following further feedback from National Grid ESO (“NGESO”).

The updated version of the modified Access Rules supersede the version submitted to Ofgem and ACM on 28 and 29 August 2019. This Joint Opinion is in reference to the modified Access Rules in case of GB decoupling submitted to Ofgem and ACM on 15/17 October 2019.

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<sup>8</sup> 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 (Besluit grensoverschrijdend net Nederland - Verenigd Koninkrijk na Brexit), that will be published at the point of Exit.

<sup>9</sup> 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](https://epr.ofgem.gov.uk/Content/Documents/Electricity_Interconnector_Standard%20Licence%20Conditions%20Consolidated%20-%20Current%20Version.pdf)

<sup>10</sup> BritNed’s consultation page can be accessed here: <https://www.britned.com/consultations/>

## 2. THE MODIFIED ACCESS RULES IN CASE OF GB DECOUPLING

### 2.1 Aim of the proposed modified Access Rules in case of GB decoupling

The aim of the modified Access Rules in case of GB decoupling is to amend the intraday auction schedule such that there would be four intraday explicit auctions with twenty-four nomination gates.

#### *New design of intraday explicit auctions and nomination gates*

BDL propose changes to the design and timing of explicit allocation in the intraday timeframe as set out in Schedule 2 (5) of the modified Access Rules in case of GB decoupling. Following a response from NGENSO to the schedule proposed in the public consultation, BDL made a further revision to these timings (specified in section 2.2 Feedback of public consultation).

BDL has proposed to allocate intraday capacity in the form of PTRs via explicit auctions, using its existing Kingdom platform. Intraday capacity will be allocated through four auctions with twenty-four nomination gates, one for each hour of the delivery day. PTR holders' can nominate their intraday capacity during the nomination gate period.

#### *Clarification of rules concerning compensation*

Annex 1 of the modified Access Rules in case of GB decoupling contains the Allocation Rules for long-term transmission rights. BDL has proposed amendments to Article 59 and 61 to clarify the compensation mechanisms that would apply in case of curtailment of long-term capacity.

### 2.2 Feedback of public consultation

BDL has submitted the modified Access Rules in case of GB decoupling to public consultation. A consultation report was included with the formal submission of the modified Access Rules, which summarises stakeholders' responses and details BDL's position on the points raised.

BDL received comments from four respondees. These comments, and the relevant response by BDL, have been grouped by issue below.

#### *New design of intraday explicit auctions and nomination gates*



- One respondent highlighted that the 'Use-it-or-lose-it' ("UIoLI")<sup>11</sup> procedure with this auction design may result in market participants paying several times for the capacity in some hours. The respondent considered a 'Use-it-or-sell-it' ("UIoSI")<sup>12</sup> mechanism would be more appropriate. Another respondent considered that BDL should not charge market participants for non-nominated intraday capacity if this capacity was then sold to other market participants in the next auction. BDL stated that they believed UIoLI is the most efficient solution and that firm positions would stop market participants paying more than once.
- Two respondents considered BritNed should offer less than 5 intraday auctions to maintain liquidity and to minimise operational costs. Of those respondents, one expressed a preference for 4 auctions, with 1 auction in D-1<sup>13</sup> and 3 auctions intraday. The other expressed a preference for 3 intraday auctions. BDL decided to remove the proposed Intraday Auction 5 and has made the proposed Intraday Auction 4 longer.
- One respondent suggested extending the day-ahead nomination deadline from between 11:00 and 13:00 CET to between 11:00 and 14:00 CET. The respondent considered this would provide more time to nominate day ahead flows and align with other day ahead cross border flow nominations. BDL stated that such an arrangement would not be possible due to the nominations deadline on the Dutch market set by TenneT TSO B.V.
- National Grid Electricity System Operator ("NGESO") highlighted that it could need to increase the reserve volume because of the hourly nomination gates. NGESO also stated that this change would require enhanced operational tools to be dealt with accordingly.
- Following additional engagement with NGESO BDL amended the intraday auctions to avoid overlapping IDA Unit Validity Times (the individual hours for which the units have been offered in the applicable intraday auction). This resulted in the submission of the updated version of the modified Access Rules in case of GB decoupling on the 15 October to Ofgem and on 17 October 2019 to ACM.

#### *Long term auction reserve price*

- One respondent considered the current reserve price for long-term auction to be preventing an optimal allocation of capacity and should be removed or set at 'zero'. ACM and Ofgem consider this

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<sup>11</sup> Use it or lose it (UIoLI) is the process of re-auctioning unused (i.e. non-nominated) capacity where the holders of the unused capacity have no right to receive re-remuneration.

<sup>12</sup> Use it or sell it (UIoSI) is the process of re-auctioning unused (i.e. non-nominated) capacity where the holders of the unused capacity receive re-remuneration.

<sup>13</sup> D-1 is the day before the day of delivery. In this case an auction in D-1 means a day ahead auction.

a provision of BDL's exemption<sup>14</sup> from the provisions of Article 6(6) of Regulation (EC) No 1228/2003 which will continue to apply through domestic legislation in the UK and the Netherlands at the point of Exit without a deal.

### 2.3 RAs' analysis of the modified Access Rules in case of GB decoupling

The RAs have thoroughly analysed and evaluated the modified Access Rules in case of GB decoupling, including responses to public consultations.

The RAs consider that the new design of intraday explicit auctions and nomination gates further improves BDLs existing intraday arrangements.

The RAs also take note of NGENSO's response in relation to the number of intraday auctions and nomination gates. We encourage ongoing coordination between the relevant stakeholders, to ensure that the transmission systems in both GB and the Netherlands are operated effectively and efficiently. NGENSO has confirmed that the appropriate system changes will be in place to facilitate the go-live of BritNed's intraday auctions, and we note the obligation of system operators to co-ordinate and direct the flow of electricity in an efficient and economic manner.

ACM and Ofgem acknowledge that BDL have further clarified the firmness arrangements that would apply in the case of long-term capacity curtailment. ACM and Ofgem encourage BDL to keep the remuneration and compensation arrangements under review, to ensure they provide sufficient hedging opportunities and remain fit for purpose.

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<sup>14</sup> Ofgem Exemption Order for BDL, July 2007: <https://www.ofgem.gov.uk/sites/default/files/docs/2007/07/britned-decision-letter-12-july.pdf>. Amendment to the exemption, November 2007: <https://www.ofgem.gov.uk/sites/default/files/docs/2007/11/britned-amended-exemption-order.pdf>; exemption decision by the Dutch minister van Economische Zaken, 27 June 2007, ET/EM/7077821, Stc. 2007, 131 as amended by decision of 15 november 2007, ET/EM/7134956, Stc. 2007, 240.

### 3. RA'S DECISION ON THE MODIFIED ACCESS RULES IN CASE OF GB DECOUPLING

#### 3.1 RAs approve the modified Access Rules in case of GB decoupling

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

Following national decisions by ACM and Ofgem, BDL will be required to publish the modified Access Rules in case of GB decoupling on its website and to ensure their entry into force according to the implementation timeline set out in Chapter 3.2 of this Joint Opinion.

#### 3.2 Effectiveness date

The modified Access Rules in case of GB decoupling submitted by BDL to Ofgem and ACM on 15/17 October 2019 shall apply in the event that GB no longer participates in the single day-ahead market coupling as a result of the UK leaving the EU without a deal. The modified Access Rules in case of GB decoupling shall apply from the point at which the UK leaves the EU without a deal.

Pursuant to Article 50 of the Treaty on European Union, the UK is scheduled to leave the EU on 31 October 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 1 November 2019 for delivery on 2 November 2019.

For the avoidance of doubt, the modified Access Rules in case of GB decoupling will supercede and render redundant the Access Rules in case of GB decoupling (“BritNed Access Rules – March 2019”) as approved by Ofgem on 15 March 2019<sup>15</sup>.

#### 3.3 Further considerations

ACM and Ofgem inform stakeholders that in the event that the UK leaves the EU without a deal, they expect to work with BDL to refine these arrangements.

ACM and Ofgem ask BDL to continue to review their Access Rules to ensure they remain fit for purpose. Any modifications required to improve the Access Rules should be submitted to the relevant RAs.

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<sup>15</sup> ACM has not approved this version January 2019 of the Access Rules because of Brexit being postponed.