



Making a positive difference
for energy consumers

Jan Hoogstraaten
Regulatory Manager
BritNed Development Limited
Utrechtseweg 310
Building M01
6812 AR Arnhem
The Netherlands

Direct Dial: 020 7901 7000

Email: Kristian.Marr@ofgem.gov.uk

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Dear Jan,

Approval of the modified Access Rules for the BritNed interconnector to apply only in the event the UK leaves the EU without a deal

On 13 December 2019, BritNed Development Limited (BDL) submitted modified Access Rules (the modified Access Rules) for the BritNed interconnector¹ to the Authority² for approval. The Authority is the designated Regulatory Authority (RA) for Great Britain (GB).

The modified Access Rules were submitted pursuant to Standard Licence Condition (SLC) 11A of BDL's electricity interconnector licence (the Licence)³, which requires BDL to maintain 'Access Rules', that set out the terms and conditions for access to, and including use of, the interconnector.

¹ BritNed is a 1,000MW high voltage direct current (HVDC) interconnector, connecting the Dutch transmission system to the system of GB, between Maasvlakte in the Netherlands and the Isle of Grain in the UK. BDL is a joint venture of Dutch NLink International B.V. – a subsidiary of TenneT Holding B.V. – and British TSO National Grid Interconnector Holdings Ltd. BDL commercially operates the BritNed interconnector.

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.

We have decided to approve the modified Access Rules on the basis that we are satisfied the modifications better achieve the relevant Access Rules objectives as required under BDL's licence.⁴ This letter contains a Direction (attached as Annex 1) approving the modified Access Rules. For the avoidance of doubt, in the event the United Kingdom (UK) leaves the European Union (EU) without a deal on 31 January 2020, these modified Access Rules would come into effect immediately.

Background

The UK is scheduled to leave the EU on 31 January 2020, and will do so unless agreed otherwise by the UK and the EU. Leaving the EU with an agreement remains the Government's stated intention. However, until this is confirmed, it is responsible to plan for every eventuality, including a no-deal scenario.

The modifications to the Access Rules

On 13 December 2019, BDL submitted the modified Access Rules to the Authority for approval.

These Access Rules include two amendments to the BritNed Access Rules approved on 18 October 2019⁵:

- removing Intraday Schedule 1, which has become redundant following Intraday Schedule 2 going live on 9 December 2019⁶, thus leaving only one schedule for intraday auctions.
- correcting a typographical mistake in the remaining schedule, to clarify that the first Unit Validity Time⁷ of Intraday Auction 1 does not overlap with the Unit Validity Times of the other three intraday auctions.

If the UK leaves the EU without a deal, the modified Access Rules would enter into force on 31 January 2020 at 23:00 GMT, such that the first day-ahead explicit auction would take place on 1 February 2020 for delivery on 2 February 2020.

⁴ The relevant Access Rules objectives are set out in SLC 11A and 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.

⁵ Ofgem's decision is available here : <https://www.ofgem.gov.uk/publications-and-updates/approval-modified-access-rules-britned-interconnector-apply-event-uk-leaves-eu-without-deal>

⁶ The notice of transition to the new intraday schedule was announced by BritNed on 25 November 2019: <https://www.britned.com/news/new-britned-intraday-schedule/>

⁷ The Unit validity time means the individual hours within which the transmission rights (Units) can be used, if nominated for delivery.

As these amendments do not amend the substance of the Access Rules approved on 18 October 2019 and merely aim at bringing clarifications for market participants, BDL has suggested, and Ofgem agrees, that the public consultation held between 26 July 2019 and 23 August 2019⁸ fulfils the requirements of the applicable legal and regulatory framework.

Regulatory framework

SLC 11A of the Licence introduces relevant Access Rules objectives, against which the Authority will assess the Access Rules and any proposed modifications. The relevant objectives are that Access Rules shall be transparent, objective, non-discriminatory and compliant with the Electricity Regulation⁹ and any relevant legally binding decision of the European Commission and/or the Agency for the Cooperation of Energy Regulators (the Agency).

The withdrawal of the UK from the EU will result in changes to the legal and regulatory frameworks in GB. To take these changes into account when assessing the BritNed Access Rules, we considered the Electricity Regulation as amended after exit day by application of the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019.

The Authority's decision

We have reviewed the modified Access Rules submitted to Ofgem on 13 December 2019. We have concluded that they meet the relevant Access Rules objectives.

In reaching our decision, we have considered the responses to the consultation held between 26 July 2019 and 23 August 2019¹⁰, and have consulted and closely cooperated with the Authority for Consumers & Markets (ACM), the Dutch RA, on BDL's proposal.

The Authority approves the modified Access Rules on the basis that they meet the relevant Access Rules objectives set out in SLC 11A(4) of the Licence.

The Direction issued in accordance with SLC 11A(13) of the Licence can be found in Annex 1 of this letter. For the avoidance of doubt, the modified Access Rules will supersede the BritNed Access Rules approved on 18 October 2019.

⁸ The consultation for the No Deal Access Rules is available here: <https://www.britned.com/news/no-deal-access-rules-consultation-july-2019/>

⁹ See Regulation (EC) No 714/2009 on conditions for access to the network for cross border exchanges in electricity. By application of the European Union (Withdrawal) Act 2018, the Electricity Regulation will become retained EU law after exit day. By application of the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019, the Electricity Regulation is amended to take into account the impact of the withdrawal of the UK from the EU. The terms of the Electricity Regulation will therefore be different before and after exit day.

¹⁰ The consultation for the no-deal Access Rules is available here: <https://www.britned.com/news/no-deal-access-rules-consultation-july-2019/>

Next steps**Publication of the modified Access Rules**

In accordance with SLC 11A(14) of the Licence, BDL is required to publish (at least on its website) the approved Access Rules for a period of 28 days prior to their coming into effect (the Publication Period).

Future modifications

BDL should keep the modified Access Rules under review to ensure they remain fit for purpose, and submit any proposed modifications, to the Authority for approval, in good time and in accordance with the requirements set out in SLC 11A of the Licence.

Yours sincerely,

Kristian Marr

Interim Head of European Wholesale Markets, Wholesale Markets and Commercial

ANNEX 1

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, 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").
3. Standard Licence Condition 11A, paragraph 8, requires that the Licensee reviews 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.
4. 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.
5. In accordance with Standard Licence Condition 11A, paragraph 10, on 13 December 2019, the Licensee furnished the Authority with a report setting out the Licensee's proposed modifications to the Access Rules that would apply in the event that the UK leaves the EU without a deal (the "modified Access Rules").

6. After careful consideration of the report and the responses to the public consultation and after consulting and closely cooperating with the Dutch regulatory authority 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 accompanying this Direction.
7. Standard License Condition 11A, paragraph 14 requires that, unless the Authority directs otherwise, the modified Access Rules shall be published 28 days prior to coming into effect.
8. The Authority therefore hereby directs, pursuant to paragraph 13 of Standard Licence Condition 11A of the Licence, that the Licensee's modified Access Rules are approved, and
9. This Direction shall take effect immediately 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. Copies of the documents mentioned in this Direction can be found on the Ofgem website (www.ofgem.gov.uk).

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Kristian Marr

Interim Head of European Wholesale Markets, Wholesale Markets and Commercial
Signed on behalf of the Authority and authorised for that purpose by the Authority
on 17 December 2019