

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 GB no longer being part of the internal energy market (“IEM”) (hereafter “GB decoupling”). The concerned RA in the Netherlands is the Authority for Consumers & Markets (“ACM”) and the concerned RA in GB is 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 GB between Maasvlakte in the Netherlands and the Isle of Grain in GB. 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.

The UK left the EU on 31 January 2020 at 24:00 CET, when the UK-EU Withdrawal Agreement came into force (the “Agreement”). It is expected GB will no longer have access to the IEM at the end of the transition period, and therefore it will no longer participate in single day-ahead market coupling and single intraday coupling on GB electricity interconnectors. In that event, the modified Access Rules in the case of GB decoupling would come into effect at the end of the transition period.

On 17 October 2019², ACM and Ofgem agreed 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 18 October 2019³, Ofgem also approved these rules. ACM has not approved this version of Access Rules since its competence to do so would only come into force at the point the UK left the EU. On 13 December 2019, BritNed submitted an updated set of Access Rules to apply in the case of GB decoupling (“updated Access Rules in case of GB decoupling”), to amend a typographical error and remove the redundant intraday schedule. As the changes were minor ACM and Ofgem did not draft a new joint opinion, however they closely cooperated to agree a joint position to approve the updated Access Rules in case of GB decoupling. On 17

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

² The joint opinion can be accessed at the following address:

https://www.ofgem.gov.uk/system/files/docs/2019/10/ofgem_and_acm_joint_opinion_-_britned.pdf.

³ Ofgem’s decision to approve the Access Rules in case of GB decoupling for market coupling, 18 October 2019, is available at:

https://www.ofgem.gov.uk/system/files/docs/2019/10/ofgem_decision_letter_-_britned.pdf.

December 2019⁴, Ofgem approved these rules. ACM has not approved this version of Access Rules since its competence to do so would only come into force at the point the UK left the EU.

On 14 September 2020 and 15 September 2020 respectively, Ofgem and ACM received BDL's proposed modifications to the Access Rules in case of GB decoupling to further improve them ("modified Access Rules in case of GB decoupling"). ACM received amended proposals on 4 November 2020 and 16 December 2020. BDL submitted an updated version of the modified Access Rules in case of GB decoupling to Ofgem on 10 December 2020. The versions received by ACM and Ofgem on respectively 16 December 2020 and 10 December 2020 are identical, and supersede the initial submissions to Ofgem and ACM respectively on 14 September 2020 and 15 September 2020.

This document forms the basis for the RAs' national approval processes on the modified Access Rules in case of GB decoupling. It is divided into 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.

⁴ Ofgem's decision to approve the updated Access Rules in case of GB decoupling for market coupling, 17 December 2019, is available at:

https://www.ofgem.gov.uk/system/files/docs/2019/12/approval_of_the_modified_access_rules_for_the_britned_interconnector_to_apply_in_case_the_uk_leaves_the_eu_without_a_deal.pdf.

1. GENERAL CONTEXT

1.1 Potential impacts of the end of the transition period on BritNed allocation mechanisms

The UK left the EU on 31 January 2020 at 24:00 CET, when the Agreement came into force. The Agreement sets out the transitional arrangements governing the UK-EU relationship. Article 126 of the Agreement provides for an implementation period, ending on 31 December 2020. 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 2018⁵ (the "Act"). The Act will serve to convert EU law that the UK is subject to at the end of the transition period, into UK law with appropriate amendments.

At the end of the implementation period it is expected that GB will no longer be part of the IEM, and therefore will no longer participate in single day-ahead market coupling ("SDAC") and single intraday coupling ("SIDC") on GB electricity interconnectors.

On 13 December 2019, BDL submitted Access Rules in case of GB decoupling which were approved by Ofgem on 17 December 2019. ACM did not approve that version of the Access Rules since its competence to do so would only come into force at the point the UK left the EU. BDL has now proposed modifications to these Access Rules as set out in Chapter 2 of this Joint Opinion.

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

At the end of the transition period, 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. These provisions will be revoked by application of The Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019⁶.

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.

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

⁶ Available at: <http://www.legislation.gov.uk/uksi/2019/532/contents/made>.

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 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 and 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.

In the Netherlands, the legal basis for approval of the modified Access Rules is Article 22(2) of *Besluit grensoverschrijdend net Nederland - Verenigd Koninkrijk na Brexit*⁷ that came into force on 1 February 2020 (after the UK left the European Union). In GB, the legal basis for the approval of the modified Access Rules is through the Standard Licence Condition 11A of the GB electricity interconnector licence⁸.

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 4 August 2020 to 1 September 2020⁹. Following this consultation, BDL submitted the modified Access Rules in case of GB decoupling to Ofgem on 14 September 2020 and to ACM on 15 September 2020.

ACM received amended proposals on 4 November 2020 and 16 December 2020. BDL submitted an updated version of the modified Access Rules in case of GB decoupling to Ofgem on 10 December 2020. The versions received by ACM and Ofgem on respectively 16 December 2020 and 10 December 2020 are identical, and supersede the initial submissions to Ofgem and ACM respectively on 14 September 2020 and 15 September 2020.

This Joint Opinion is in reference to the modified Access Rules in case of GB decoupling received by Ofgem on 10 December 2020 and by ACM on 16 December 2020.

⁷ Besluit, houdende regels met betrekking tot de werking en exploitatie van een landsgrensoverschrijdend 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).

⁸ 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%20Interconnector%20Standard%20Licence%20Conditions%20Consolidated%20-%20Current%20Version.pdf).

⁹ 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 modified Access Rules in case of GB decoupling

The aim of the modified Access Rules in case of GB decoupling is to:

- a) Amend the day-ahead nomination closure time to 13:30 CET and shorten the bidding period by 10 minutes for the explicit day-ahead auctions.
- b) Implement full firmness arrangements meaning that once capacity is nominated if a curtailment takes place market participants will be kept financially firm.
- c) Where relevant make amendments to account for a Third Party Allocation Platform being used for long-term and day-ahead trade, including making clear that market participants partaking in trade at these times must sign the Participation Agreement of the Third Party, and as a result abide by the Third Party's rules for trade, and
- d) To improve the readability and structure of the rules.

Timing of auctions and bidding period

BDL also proposes to change the timing of the day-ahead nomination gate closure to 13:30 CET from 13:00 CET, as outlined in schedule 2 of the modified Access Rules, to allow the market to react to the spot auction results in GB. The Bidding Period has also been shortened by 10 minutes for the explicit day-ahead auctions to allow market participants to have their results 10 minutes sooner.

Firmness arrangements

The modified Access Rules include the introduction of “full firmness” arrangements as set out in section D. This means that once capacity is nominated, it will not be curtailed for market participants after the final nomination gate, meaning market participants remain financially firm. Curtailment will only take place for system security reasons (i) before the final nomination gate for long term, day ahead and intraday transmission rights and (ii) after the final nomination gate for not nominated long term transmission rights.

Format and Structure

BDL proposes to incorporate the relevant articles of the Harmonised Allocation Rules¹⁰ (HAR) and Border Specific Annex¹¹ (BSA) into the main body of the modified Access Rules for ease of navigation. A new article has been introduced on the scope of the Access Rules including the roles of participants and BDL.

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 seven respondents. These comments, and the relevant responses by BDL, have been grouped by issue below.

Day-ahead nomination gate closure time

One respondent expressed their preference for a nomination gate deadline at 14:00 CET. They noted that this would be aligned with the deadline for most of the other interconnectors in Europe at day-ahead. However, BDL states that this is not possible because the market gate closure time in the Netherlands is 14:00 CET to submit the aggregated positions of all market participants nominating on the cable to TenneT, which also applies to BDL.

Another respondent's view was that the day-ahead nomination gate closure time should be set 15 minutes before the gate closure time of the power exchanges (12:00 CET for SDAC) to ensure market participants can balance their positions. Otherwise they felt that in the event of a curtailment between 12:00 CET and 14:00 CET, market participants will be exposed to large positions on both sides of the interconnector. BDL acknowledged this and proposed to change the day-ahead nomination gate to 11:45 CET.

However, following changes to the day-ahead auction timings on the GB power exchanges¹², BDL received further feedback from market participants as if the nomination gate closes at 11:45 CET, this would now be

¹⁰ HRA:

https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/ANNEXESTOTHEDECISIONOFTHEAGENCYFORTHECOOPERATIO4/Annex%20I_HAR%20amendment%20decision.pdf#search=Annex%20I%20E2%80%93%20Harmonised%20Allocation%20Rules%20for%20long%20term%20transmission%20rights

¹¹ BritNed BSA: https://britned-website-prd-media.s3.amazonaws.com/documents/BritNed_Border_Specific_Annex_to_the_FCA_HARs.pdf

¹² Nord Pool: <https://www.nordpoolgroup.com/trading/customer-information-on-brexit/>
Epex Spot: <https://www.epexspot.com/en/tradingproducts>

before the power exchanges' auction results had been published. Therefore, BritNed has amended its day-ahead nomination deadline to 13:30 CET to allow for the spot auction results to be taken into account.

Governing law

One respondent sought clarity around the applicability of the governing law provision in the Access Rules to the Third Party Allocation Platform. BDL noted that participation in Auctions takes place under the terms of the Participation Agreement, under separate governing law provisions. Following this feedback, BDL further clarified the modified Access Rules, noting that they are governed by English and Welsh law, unless the Auction Tool is operated by a Third Party, in which case the Rules shall be governed by and construed in accordance with the laws of the location of the registered office of such Third Party.

Third Party Allocation Platform for long-term and day-ahead trade

One respondent noted that BDL says in their Access Rules that more detailed information can be found on their website, or should be part of the arrangements in the Third Party Participation Agreement. BDL's position is that the information within the BritNed Access Rules is relevant to trading with BritNed only, and more specifically intraday trade, as participants sign a separate Participation Agreement with the Third Party provider in order to trade long-term and day-ahead. Therefore, BDL does not feel that the BritNed Access Rules are the right place to state all the rights and obligations a participant would have to trade with the Third Party provider, as those are contained within the relevant documentation of that Third Party. BDL's wording is so that participants would refer over to the Third Party documentation directly for the relevant information to partake in long-term and day-ahead trading, which BritNed states it will make available on its website.

A respondent notes that BDL uses the term "Third Party Participant Agreement" and questions which agreement is it in reference to, JAO as the Third Party Allocation Platform for long-term and day-ahead trade or otherwise. They also state that the Third Party Participant Agreement does not regulate the collaterals, and are of the opinion that the collaterals are regulated in the HAR or any other applicable rules. The understanding by BDL is that when a market participant signs the Third Party Participant Agreement the participant becomes party to all other applicable regulations of that Third Party by extension, and this includes the collaterals.

One respondent noted that the Third Party provider is not foreseen in the amendment process for the Access Rules. Changes could have a big impact on them, since there are technical limitations that need to be considered as well as time to adapt the auction tool in accordance to the rules. In response, BDL stated

that they will closely cooperate with JAO (as the current Third Party provider) to ensure that the auction tool can facilitate any changes to rules. Moreover, before any changes to the rules, BDL consults these changes and welcomes all stakeholders to express their views. BDL must take these into account in their when making amendments to the Access Rules and in their submission to the concerned regulators for approval.

One respondent expressed their concern regarding the sections about the Third Party Participation Agreement. They are of the opinion that rules that are applicable to the Third Party should be an integral part of the Access Rules. BDL states that they use the term “Third Party” to avoid any interference with the processes of the Third Party (in this case JAO) operating the auction tool. When a market participant wishes to participate in JAO organised long-term and day-ahead auctions, BDL understands that as part of the process of signing up to the Third Party Participation Agreement all other obligations determined by the Third Party have to be fulfilled.

A respondent expressed their concerns on the sections regarding invoicing in relation to the Third Party agreement, as they felt it was not clear what is meant in Rule C2: Payments and Invoicing. BDL clarifies that, in accordance with C2.1.1 of the modified Access Rules, long-term and day-ahead auctions are conducted by a Third Party, and therefore the payments and invoicing for long-term and day-ahead would be handled by the Third Party according to their rules. When BritNed is operating the Auction Tool (at this time for intraday trade only) then the invoicing shall follow the terms in this Rule C2 of the modified Access Rules.

One respondent highlighted that the Third Party does not offer a 24/7 helpdesk service, meaning that the Third Party would not be able to provide customer service outside of the office hours. Market participants feel they should be able to resolve an incident, for example during the night or at the weekend. BDL agrees with the concern of market participants, and encourages them to provide this feedback to the Third Party, but BDL is not in the position to change the Third Party’s office hours as this remains at the discretion of the Third Party.

Reduction Periods

One respondent is of the opinion that BDL should, in case of a Reduction Period, not only mention the duration and amount of offered capacities, but also the reason and justification for the reduction. BDL clarifies that the Reduction Periods are for maintenance purposes and published this on their provisional auction calendar, BDL does not consider there to be an obligation to provide further justification to that which it provides already.

Remuneration of returned long-term transmission rights

One respondent noted that the type of remuneration offered by BDL for returned long-term transition rights will not provide a hedging opportunity between the British and Dutch markets as it will be remunerated at Marginal Price. However, this remuneration aligns with BDL's Access Rules as approved in December 2019, and therefore is not a change in the remuneration of returned long-term rights. The respondent also requests a single reference price in the UK, and if this is not possible they are in favour of BDL assigning a reference price using one of the GB power exchanges. BDL responds that these rules govern the situation in which GB is no longer a member of the IEM at the end of the transition period. Therefore the markets between GB and the Netherlands would no longer be coupled and the resulting market spread no longer exists.

Long-term auction reserve price

Two respondents considered that BDL's long-term auction reserve price should be re-considered to provide financial payment for unsold capacity, and disagree with the use of a reserve price on BritNed. BDL notes the reserve price is to financially ensure BritNed is able to operate the interconnector for the time of 25 years, and reflects the pay-back of the investment and the operational cost of the interconnector during that period. Ofgem and ACM consider this to be a provision of BDL's exemption¹³ from the provisions of Articles 6(6) of Regulation (EC) No 1228/2003 which will continue to apply.

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.

More generally, the RAs also acknowledge that BDL has worked to improve the readability of the modified Access Rules by restructuring the document for ease of navigation.

¹³ Ofgem Exemption Order for BDL, July 2007: <https://www.ofgem.gov.uk/sites/default/files/docs/2007/07/britned-decision-letter12-july.pdf> . Amendment to the exemption, November 2007: <https://www.ofgem.gov.uk/sites/default/files/docs/2007/11/britnedamended-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.

With regard to the day-ahead nomination gate closure, RAs consider that the change in timings further improves the existing day-ahead arrangements taking into account the changed day-ahead auction times on the GB power exchanges.

Ofgem and ACM note the response from a stakeholder in relation to the governing law for the Access Rules. We note that BDL have made amendments to their modified Access Rules to clarify that the Access Rules are governed by English and Welsh law, unless the Auction Tool is operated by a Third Party. In that case, we consider that the modified Access Rules relating to the Governing Law are sufficiently drafted to allow Third Parties to set their own governing law provision under the terms of the Participation Agreement.

With regard to the comments in relation to the *Third Party Allocation Platform for long-term and day-ahead trade*, the Ofgem and ACM acknowledge stakeholder concerns that the modified Access Rules make multiple references to the Third Party Participation Agreement or Third Party rules. BDL has confirmed that when a market participant signs the Third Party Participant Agreement they become party to all other applicable regulations and rules of that Third Party by extension. We note that following stakeholder feedback, where relevant BDL have made amendments to their modified Access Rules to clarify this. We would also expect BDL, being the owner of the Access Rules, to ensure that market participants are informed and able to engage if changes are proposed to the arrangements governed by the Access Rules.

With regards to the Third Party helpdesk not offering 24/7 office hours, RAs acknowledge that this remains at the discretion of the Third Party and not BDL. However, we encourage BDL to state on their website the Third Party's office hours and which auctions will be outside of office hours for additional transparency. This will enable market participants to make informed decisions on whether to participate or not in the relevant auctions.

Ofgem and ACM recognise that BDL has confirmed that they publish information on Reduction Periods in their provisional auction calendar, and they do not consider there to be an obligation to provide further justification to that which they provide already.

With regards to the remuneration of returned long-term transmission rights, RAs recognise that there has been no change to the remuneration amounts in the case of returned long-term transmission rights. RAs also acknowledge that they do not expect a single price in GB to exist at the end of the transition period. The RAs encourage BDL to keep the compensation arrangements under review.

ACM and Ofgem also acknowledge that BDL have further clarified the reserve price that would apply for long-term auctions, and note that the reserve price is consistent with BDL's exemption from the provisions of Article 6(6) of Regulation (EC) No 1228/2003.

ACM and Ofgem welcome the improvements in firmness arrangements that would apply in the case of capacity curtailment after the final nomination gate.

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 the 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 10 December 2020 and 16 December 2020 respectively shall apply in the event that GB no longer participates in SDAC as a result of no longer being a part of the IEM at the end of the transition period. The modified Access Rules in case of GB decoupling shall apply from the end of the transition period pursuant to Article 126 of the Treaty on European Union and will end on 31 December 2020 (24:00 CET).

For the avoidance of doubt, the modified Access Rules in case of GB decoupling will supersede and render redundant the Access Rules in case of GB decoupling ("BritNed Access Rules – December 2019") as approved by Ofgem on 17 December 2019 and ACM on 18 December 2020.

3.3 Further considerations

ACM and Ofgem inform stakeholders that in the event that the UK leaves the EU either with or without a Free Trade Agreement, 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.