

All interested parties,  
stakeholders in GB and beyond,  
and other regulatory bodies

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Date: 10 December 2015

Dear colleague,

### **Final decisions on applications made by APX Commodities Limited and Nord Pool Spot AS to be designated Nominated Electricity Market Operators in Great Britain**

The Commission Regulation to establish a Guideline on Capacity Allocation and Congestion Management (the CACM regulation<sup>1</sup>) requires member states to ensure that one or more Nominated Electricity Market Operators (NEMOs) are designated by four months after the entry into force of the Regulation to perform single day-ahead and/or intraday coupling.<sup>2</sup> In addition, it requires that unless otherwise provided by member states, regulatory authorities shall be the designating authority responsible for NEMO designation.<sup>3</sup>

We have previously consulted on and set out how we, as the designating authority in Great Britain (GB), will process applications from candidates wishing to be designated as NEMOs in GB in line with the requirements of the CACM regulation.<sup>4</sup> On 16 July 2015 we consulted on our draft decisions for applications received from APX Commodities Limited (APX) and Nord Pool Spot AS (NPS). In particular we consulted on:

1. Our draft decision, which was to designate NPS and APX as NEMOs in GB for single day ahead and intraday coupling. We welcomed any evidence that stakeholders and other regulatory bodies may consider relevant for us to take into account in reaching a final decision.
2. The meaning and terms of a successful designation and the draft designation notices set out in Appendices 1 and 2 of the letter.
3. Changes necessary to provide a sufficient regulatory framework for NEMOs to fully implement the CACM regulation.

This letter sets out our final decision, as the designating authority in GB, for the applications received from APX and NPS. This decision takes into account our assessment of the evidence provided by APX and NPS and consultation responses to our draft decisions.

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<sup>1</sup> Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015R1222&from=EN>

<sup>2</sup> Article 4.1 of the CACM regulation.

<sup>3</sup> Article 4.3 of the CACM regulation. In their letter of 18 December 2014, DECC confirmed that Ofgem would be the designating authority in GB.

<sup>4</sup> On 18 December 2014 we consulted on our proposed application process for NEMO designation and application of designation criteria. The consultation, consultation responses, and our decision can be found here.

<https://www.ofgem.gov.uk/publications-and-updates/implementing-eu-electricity-network-codes-and-consulting-ofgem%E2%80%99s-proposed-application-process-nemo-designation> . On 16 July 2015 we published our consultation on our draft decisions for applications. The consultation and consultation responses can be found here: <https://www.ofgem.gov.uk/publications-and-updates/consultation-our-draft-decisions-applications-be-designated-nominated-electricity-market-operators-gb>

## Designation process and consultation on our draft designation decisions

On 27 February 2015 we published our decision following consultation on how we will designate NEMOs in GB and our application of the designation criteria. In addition, we invited candidates to submit applications no later than 30 March 2015 to be designated through an initial designation process.

We subsequently received applications from APX and NPS to be designated NEMOs in GB for single day ahead and intraday coupling. Following receipt of these applications we have assessed whether they meet the designation criteria set out in the CACM regulation. On 16 July 2015 we consulted all interested parties, stakeholders in GB and beyond, and other regulatory bodies on our draft decisions to designate both APX and NPS as NEMOs in GB.<sup>5</sup> We received only one consultation response. This was a confidential response provided by APX which we have responded to directly.

## Final decisions

### *Decisions on applications*

On the basis of our assessment of the applications submitted by APX and NPS and our consultation on our draft decisions we consider both candidates meet the designation criteria set out in the CACM regulation. Both APX and NPS are therefore designated as NEMOs in GB for single day ahead and intraday coupling pursuant to the Designation Notices in Appendix 1 and Appendix 2. These designations will take effect on 11 December 2015 for an initial term of four years subject to ongoing compliance by APX and NPS with the designation criteria.

As we set out in our draft decision, we do not consider it appropriate to publish the evidence submitted by either candidate or our internal assessment. This is because the applications and assessments contain commercially sensitive information relating to the business and operational arrangements of APX and NPS. However, we have provided the opportunity for interested parties, stakeholders in GB and beyond, and other regulatory bodies to comment on our process and draft decisions and to provide us with any evidence they consider may be relevant for us to take into account in making our final designation decisions. We have not received any evidence that would suggest either APX or NPS do not meet the designation criteria.

In our draft decision we noted that during our designation process it was announced that APX Group and EPEX SPOT intend to integrate their businesses.<sup>6</sup> In making our final decision we have assessed changes to APX's application that have already taken effect as a result of the post-merger integration (PMI) process between the APX Group and EPEX SPOT. We have also noted that as part of this process it is expected that the clearing services currently provided by APX will be transferred to European Commodities Clearing (ECC) in 2016.

We expect APX to keep the Authority informed ahead of and during any planned changes with respect to the PMI process, including any transfer of its clearing services to ECC. However, as set out below in the meaning and terms of a successful designation, all designated NEMOs must comply with the designation criteria. As the designating authority in GB we are required to monitor and ensure compliance by all NEMOs performing single day ahead and / or intraday coupling in GB.<sup>7</sup> As such we may require information from NEMOs to monitor their ongoing compliance. Failure by a NEMO designated in GB to restore

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<sup>5</sup> The consultation and consultation responses can be found here: <https://www.ofgem.gov.uk/publications-and-updates/consultation-our-draft-decisions-applications-be-designated-nominated-electricity-market-operators-gb>

<sup>6</sup> Announced 17 April 2015: [https://www.epexspot.com/en/press-media/press/details/press/APX\\_Group\\_and\\_EPEX\\_SPOT\\_integrate\\_their\\_businesses](https://www.epexspot.com/en/press-media/press/details/press/APX_Group_and_EPEX_SPOT_integrate_their_businesses)

<sup>7</sup> Article 4.5 of the CACM regulation.

compliance within six months of our notification of non-compliance will result in de-designation as required by the CACM regulation.<sup>8</sup>

### *Meaning and terms of a successful designation*

In our draft decision we set out our meanings and terms for a successful designation including terms for renewal and revocation. We have not received any concerns with these meanings or terms. For the purposes of clarity we repeat these here as part of our final decision.

A successful designation in GB means the candidate is considered by the Authority to meet the criteria of the CACM regulation and is therefore a designated NEMO able to perform the tasks of NEMOs set out in the CACM regulation.<sup>9</sup> A designation is not, and should not be considered as, confirmation of ongoing compliance of a designated NEMO with the requirements of the CACM regulation, or compliance of the entity designated as a NEMO with wider requirements of EU and UK law.

A designated NEMO will be responsible for and be required to make sure it continues to comply with the criteria and its wider obligations and requirements set out in the CACM regulation and EU and UK law. In particular, the assessment that an entity meets the criteria and is designated as a NEMO in GB does not prejudice future decisions to be taken under and in line with the CACM regulation, for example on capacity allocation and congestion management cost recovery.<sup>10</sup> Similarly, designation is not, and should not be considered as, an approval of the systems and processes required under the EU regulation on energy market integrity and transparency (No 1227/2011) (REMIT), or be used as a defence to any breaches of the entity's obligations under REMIT.

In the event a designated NEMO fails to maintain compliance with the criteria and is not able to restore compliance within six months of being notified of such failure by the designating authority, the member state where the NEMO has been designated shall ensure that designation is revoked.<sup>11</sup> As the designating authority in GB we are responsible for NEMO designation and monitoring compliance with the criteria and so we will revoke a designation in GB if a NEMO fails to maintain compliance with the criteria and is not able to restore compliance within six months of notification in line with Article 4.8 and 9.8 of the CACM regulation.

In addition, we consider there may be other circumstances in which it would be appropriate for us to revoke a designation:

- A designated NEMO may itself wish to cease operation, in which case it should be able to request for its designation to be revoked. However, we do not consider it possible for a designated NEMO to transfer or novate its designation to a different entity. This is because the CACM regulation is clear that an entity can only be designated a NEMO if it is determined to have met the criteria by the designating authority.
- We also consider that in the case of insolvency, or if the Authority is satisfied that there has been a material misstatement of fact by or on behalf of a NEMO in making its application for designation as a NEMO, it may be appropriate to revoke a designation.

In revoking any designation we consider it may be necessary to allow for a reasonable period of time before revocation takes effect. This should take into account both the implications of any non-compliance and of revocation on the operation of the wholesale market and consumer interests. Therefore, in the case of failure to restore compliance after notification or if a NEMO requests or otherwise agrees for its designation to be revoked, the

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<sup>8</sup> Article 4.8 of the CACM regulation.

<sup>9</sup> The criteria are set out in Article 6 of the CACM regulation. NEMO tasks are set out in Article 7 of the CACM regulation.

<sup>10</sup> Title III, Chapter 3, *Costs*, of the CACM regulation

<sup>11</sup> Article 4.8 of the CACM regulation

Authority will give not less than 30 days' notice of our decision before the date the revocation will take effect. In the case of insolvency the Authority will give not less than 24 hours' notice, and in the case of any material misstatement of fact seven days.

Finally, the CACM regulation requires an initial designation term of four years.<sup>12</sup> However, it does not set out the arrangements that follow this initial term. We consider that six months prior to the expiry of this initial period designated NEMOs in GB should notify the Authority if they wish to continue to be designated in GB. This notification should include evidence that they continue to comply with the designation criteria. We will assess this evidence and, if appropriate, publish a decision to extend the NEMO's designation before its expiry date. We consider that any renewal of a designation following this initial four year designation should be for an ongoing period.

#### *Wider regulatory framework*

In our draft decision we also set out that we consider changes may be needed to UK legislation to make sure we have sufficient power to request information from NEMOs and ensure their compliance when operating in GB. This is to make sure we can fully implement and comply with the requirements of the CACM regulation for designating authorities to monitor all NEMOs performing single day ahead and / or intraday coupling within their member state, and ensure compliance by all NEMOs operating in GB with the CACM regulation. We did not receive any views on this in response to our consultation. As such, we will continue to engage with government to make sure we have sufficient powers.

In the meantime, and in absence of any changes to the GB framework, any designated NEMO in GB must still comply with its obligations under the CACM regulation. Failure to do so may result in the Authority revoking the NEMO's designation if it fails to maintain compliance with the criteria and is not able to restore compliance within six months of being notified of such failure by the Authority.<sup>13</sup>

#### **Next Steps**

We set out in our letter on our designation process that once the initial designation process has been completed applications may be submitted to the Authority for designation in GB on an ongoing basis. This decision letter formally concludes the initial designation process meaning that applications to the Authority for designation in GB may now be received at any time.

Finally, we note the CACM regulation requires Transmission System Operators (TSOs) to propose arrangements concerning more than one NEMO in a bidding zone within four months of designation of more than one NEMO.<sup>14</sup> In line with our Designation Notices, in Appendix 1 and Appendix 2, we will have two designated NEMOs in GB as of 11 December 2015. As such, we expect to receive a proposal from the relevant GB TSOs, in line with our assignment of TSO obligations under the CACM regulation, for the arrangements for more than one NEMO in GB by 11 April 2016.<sup>15</sup>

Yours faithfully,

Mark Copley  
Associate Partner, Markets

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<sup>12</sup> Article 4.2 of the CACM regulation

<sup>13</sup> Article 4.8 of the CACM regulation

<sup>14</sup> Articles 45 and 57 of the CACM regulation

<sup>15</sup> The relevant TSOs for developing and submitting this proposal to the Authority in line with the CACM regulation are: National Grid Interconnectors, Britned Development Ltd, Eirgrid IC Ltd, Moyle Interconnector Ltd. Our decision on our assignment of obligations can be found here: <https://www.ofgem.gov.uk/publications-and-updates/decision-our-consultations-assignment-transmission-system-operator-obligations-under-capacity-allocation-and-congestion-management-regulation-within-gb>.

CC: Olaf Islei, APX  
Michela Beltracchi, NPS  
Rachel Crisp, DECC  
Martin Povh, ACER

## Appendix 1 – Notice of Designation of APX Commodities Limited

### Initial Designation for the purpose of Articles 4(4) and 9(8) of the Commission Regulation, No. 2015/1222 of 24 July 2015, establishing a Guideline on Capacity Allocation and Congestion Management (the CACM Regulation), (the Designation)

#### Designation

1. The Gas and Electricity Markets Authority (the **Authority**), pursuant to Articles 4(4) (*NEMOs designation and revocation of the designation*) and 9(8)(a) (*Adoption of terms and conditions or methodologies*) of the CACM regulation, hereby designates: APX COMMODITIES LIMITED, a company registered in England and Wales under company number 03751681, whose registered office is situated at 18 King William Street, London, EC4N 7BP (**APX**), as a Nominated Electricity Market Operator (**NEMO**), for single day ahead and intraday coupling in GB for an initial term of four years. The Designation is subject to the conditions set out below.

#### Obligations

2. As a NEMO **APX** will be expected to comply with all obligations placed on **NEMOs** under and in connection with the CACM regulation.

#### Effective Date and Revocation

3. The Designation shall take effect at 12:00 am on **11 December 2015** and shall continue in force until 12:00 am on **11 December 2019**, unless renewed in accordance with paragraph 11 below.
4. The Authority may at any time by Notice revoke the Designation: –
  - a) if **APX** agrees in writing with the Authority that the Designation should be revoked; or
  - b) if **APX** fails to maintain compliance with the criteria set out in Article 6 (*NEMO designation criteria*) of the CACM regulation and is not able to restore compliance within six months of being notified of its non-compliance by the Authority; or
  - c) if **APX** –
    - i. is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986, but subject to paragraph 5 of this Notice of Designation) or has any voluntary arrangement proposed in relation to it under section 1 of that Act or enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved by the Authority);
    - ii. has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed;
    - iii. has entered into administration under section 8 of and Schedule B1 to the Insolvency Act 1986;
    - iv. passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or

- v. becomes subject to an order for winding-up by a court of competent jurisdiction; or
  - d) if **APX** is incorporated or has assets in a jurisdiction outside England and Wales and anything analogous to any of the events specified in subparagraph (c) occurs in relation to **APX** under the law of any such jurisdiction.
5. **APX** shall not be deemed to be unable to pay its debts for the purposes of paragraph 4 (c) (i) if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by **APX** with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 4.
  6. For the purposes of paragraph 4 (a), the notice period for revocation shall be not less than [30] days from the date of the written agreement between **APX** and the Authority.
  7. For the purposes of paragraph 4 (b), **APX** will have six months to provide the Authority with evidence that it has restored compliance following its notification of non-compliance by the Authority. If, following consideration of this evidence, the Authority decides, in its total discretion, to revoke the Designation it will give **APX** no less than [30] days' notice.
  8. For the purposes of paragraph 4 (c), the notice period for revocation shall be not less than [24 hours'].
  9. The Authority may at any time revoke the Designation by giving no less than [seven] days' notice in writing to **APX** where the Authority is satisfied that there has been a material misstatement (of fact) by, or on behalf of **APX**, in making its application for designation as a **NEMO**.
  10. The Authority will publish any decision to revoke this Designation on its website.

#### Renewal

11. **APX** must confirm to the Authority six months before expiry of this initial designation, on **11 June 2019**, if it wishes to continue its designation on an ongoing basis and provide evidence that it continues to meet the criteria set out in Article 6 (*NEMO designation criteria*) of the CACM regulation.

#### Interpretation

12. References in this Designation to the provision of any enactment, where after the date of this designation -
  - a) the enactment has been replaced or supplemented by another enactment, and
  - b) such enactment incorporates a corresponding provision in relation to fundamentally the same subject matter.

shall be construed, so far as the context permits, as including a reference to the corresponding provision of that other enactment.

**Mark Copley, Associate Partner, Markets**

**Duly authorised on behalf of the Gas and Electricity Markets Authority  
10 December 2015**



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## Appendix 2 – Notice of Designation of Nord Pool Spot AS

### Initial Designation for the purpose of Articles 4(4) and 9(8) of the Commission Regulation, No. 2015/1222 of 24 July 2015, establishing a Guideline on Capacity Allocation and Congestion Management (the CACM Regulation), (the Designation)

#### Designation

1. The Gas and Electricity Markets Authority (the **Authority**), pursuant to Articles 4(4) (*NEMOs designation and revocation of the designation*) and 9(8)(a) (*Adoption of terms and conditions or methodologies*) of the CACM regulation, hereby designates: NORD POOL SPOT AS, incorporated and registered under the laws of Norway having a registered office at Vollsveien 17B, 1366 Lysaker, Norway and registered in the Bronnoysund Register under the company number 984 058 098, (**NPS**), as a Nominated Electricity Market Operator (**NEMO**), for single day ahead and intraday coupling in GB for an initial term of four years. The Designation is subject to the conditions set out below.

#### Obligations

2. As a NEMO **NPS** will be expected to comply with all obligations placed on **NEMOs** under and in connection with the CACM regulation.

#### Effective Date and Revocation

3. The Designation shall take effect at 12:00 am on **11 December 2015** and shall continue in force until 12:00 am on **11 December 2019**, unless renewed in accordance with paragraph 11 below.
4. The Authority may at any time by Notice revoke the Designation: –
  - a) if **NPS** agrees in writing with the Authority that the Designation should be revoked; or
  - b) if **NPS** fails to maintain compliance with the criteria set out in Article 6 (*NEMO designation criteria*) of the CACM regulation and is not able to restore compliance within six months of being notified of its non-compliance by the Authority; or
  - c) if **NPS** –
    - i. is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986, but subject to paragraph 5 of this Notice of Designation) or has any voluntary arrangement proposed in relation to it under section 1 of that Act or enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved by the Authority);
    - ii. has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed;
    - iii. has entered into administration under section 8 of and Schedule B1 to the Insolvency Act 1986;
    - iv. passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or

- v. becomes subject to an order for winding-up by a court of competent jurisdiction; or
  - d) if **NPS** is incorporated or has assets in a jurisdiction outside England and Wales and anything analogous to any of the events specified in subparagraph (c) occurs in relation to **NPS** under the law of any such jurisdiction.
5. **NPS** shall not be deemed to be unable to pay its debts for the purposes of paragraph 4 (c) (i) if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by **NPS** with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 4.
  6. For the purposes of paragraph 4 (a), the notice period for revocation shall be not less than [30] days from the date of the written agreement between **NPS** and the Authority.
  7. For the purposes of paragraph 4 (b), **NPS** will have six months to provide the Authority with evidence that it has restored compliance following its notification of non-compliance by the Authority. If, following consideration of this evidence, the Authority decides, in its total discretion, to revoke the Designation it will give **NPS** no less than [30] days' notice.
  8. For the purposes of paragraph 4 (c), the notice period for revocation shall be not less than [24 hours'].
  9. The Authority may at any time revoke the Designation by giving no less than [seven] days' notice in writing to **NPS** where the Authority is satisfied that there has been a material misstatement (of fact) by, or on behalf of **NPS**, in making its application for designation as a **NEMO**.
  10. The Authority will publish any decision to revoke this Designation on its website.

#### Renewal

11. **NPS** must confirm to the Authority six months before expiry of this initial designation, on **11 June 2019**, if it wishes to continue its designation on an ongoing basis and provide evidence that it continues to meet the criteria set out in Article 6 (*NEMO designation criteria*) of the CACM regulation.

#### Interpretation

12. References in this Designation to the provision of any enactment, where after the date of this designation -
  - c) the enactment has been replaced or supplemented by another enactment, and
  - d) such enactment incorporates a corresponding provision in relation to fundamentally the same subject matter.

shall be construed, so far as the context permits, as including a reference to the corresponding provision of that other enactment.

**Mark Copley, Associate Partner, Markets**

**Duly authorised on behalf of the Gas and Electricity Markets Authority  
10 December 2015**