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for energy consumers

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

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Date: 30 November 2016

To whom it may concern,

Final decision on the application made by EPEX SPOT SE to be designated a Nominated Electricity Market Operator in Great Britain for single day ahead and intraday coupling

Final decision on the request for revocation of Nominated Electricity Market Operator designation in Great Britain for single day ahead and intraday coupling held by APX Commodities Limited

Background

On 11 December 2015 we¹ designated APX Commodities Limited (APX) as a Nominated Electricity Market Operator (NEMO) in Great Britain (GB) for single day ahead and intraday coupling², pursuant to Article 4(4) and 9(8)³ of the European Commission Regulation 2015/1222 establishing a Guideline on Capacity Allocation and Congestion Management (the CACM regulation).

In making our draft and final decision at that time we noted that during our designation process APX Group and EPEX SPOT SE (EPEX SPOT) had announced their intention to integrate their businesses. The transaction, leading to the acquisition of the APX Group by EPEX SPOT, as a wholly owned subsidiary, was completed on 4 May 2015.

In our final decision we explained that we had assessed changes to APX's application that had already taken effect as a result of the integration process. We also explained that in making our decision we took into account that as part of the integration process it was expected that APX's clearing services would be transferred to European Commodities Clearing (ECC AG). Finally, we noted that we expected APX to keep the Authority informed ahead of and during any planned changes with respect to the post-merger-integration process.

¹ 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.

² [Final decisions on applications made by APX Commodities Limited and Nord Pool Spot AS to be designated Nominated Electricity Market Operators in Great Britain.](#)

³ That designation notice referred to Articles 4(4) and 9(8)(a) of the CACM regulation. We also consider that Article 4(2) is relevant and so have included this in the designation notice in the appendix to this letter. We will write to the other designated NEMO in GB to clarify that this is the basis on which their designation is made as well.

Following that designation, EPEX SPOT provided us an update on its corporate integration project, which explained that APX will be integrated into EPEX SPOT, by means of cross-border merger or transfer of assets on 31 December 2016. As a result of this integration EPEX SPOT advised us that the operations of single day ahead and intraday coupling and the services provided to members will be transferred from APX to EPEX SPOT. Furthermore, we were informed that contracts, licences and more generally duties and obligations will be transferred from APX to EPEX SPOT.

As explained in our decision letter for APX's NEMO designation⁴, 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. In view of that, we do not consider that APX can transfer or novate its NEMO designation to EPEX SPOT in order to reflect the result of its integration process and transfer of operations.

Therefore, on 2 August 2016 APX submitted in writing a request to the Authority to agree to revoke its NEMO designation, and, at the same time, EPEX SPOT submitted an application to be designated a NEMO in GB for single day ahead and intraday coupling. APX explained that the reason for its request to revoke its designation is to reflect the result of the integration process and the simultaneous application by EPEX SPOT for designation in GB.

Designation process and consultation on our draft designation decision

Following receipt of the application from EPEX SPOT we have assessed whether the applicant meets the NEMO designation criteria set out in Article 6 of the CACM regulation. This has included assessment of the evidence submitted to the Authority, together with assessment meetings with EPEX SPOT to discuss their submission and, where necessary, request and assessment of additional information to support their application.

We do not consider it appropriate to publish the evidence submitted by EPEX SPOT or our internal assessment. This is because the application and assessment contain commercially sensitive information relating to the business and operational arrangements of EPEX SPOT.

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 decision. In particular, from 3 October until 31 October 2016 we consulted on⁵:

1. Our draft decision to designate EPEX SPOT as a NEMO in GB for single day ahead and intraday coupling.
2. Our draft decision to revoke the NEMO designation held by APX single for day ahead and intraday coupling.

We did not receive any consultation responses or other evidence that would suggest EPEX SPOT does not meet the designation criteria. We similarly received no responses relating to the proposed revocation of the NEMO designation for APX.

⁴ [Final decisions on applications made by APX Commodities Limited and Nord Pool Spot AS to be designated Nominated Electricity Market Operators in GB.](#)

⁵ [Consultation on our minded to decisions to designate EPEX SPOT a Nominated Electricity Market Operator in GB and revoke the designation held by APX Commodities Ltd.](#)

Final decision on the application made by EPEX SPOT SE to be designated a Nominated Electricity Market Operator in Great Britain for single day ahead and intraday coupling

On the basis of our assessment of the application submitted by EPEX SPOT and the outcome of our consultation on our draft decision we consider that EPEX SPOT meets the designation criteria set out in the CACM regulation. EPEX SPOT is therefore designated as a NEMO in GB for single day ahead and intraday coupling pursuant to the Designation Notice in Appendix 1 of this letter. This designation will take effect on 1 January 2017 for an initial term of four years subject to ongoing compliance by EPEX SPOT with the designation criteria.

Final decision on request for revocation of Nominated Electricity Market Operator designation in Great Britain for single day ahead and intraday coupling held by APX Commodities Limited

By letter dated 2 August 2016, APX requested that the Authority revoke its NEMO designation in accordance with paragraph 4(a) of its Designation Notice. The Authority hereby agrees to revoke APX's NEMO designation, with effect on 1 January 2017, pursuant to the Notice of Revocation in Appendix 2 of this letter. This letter is therefore the agreement in writing between the Authority and APX that the APX NEMO designation should be revoked, in accordance with condition 4(a) of the APX NEMO designation.

In reaching our decision we assessed potential impacts that the revocation could have on the operation of the wholesale markets and on consumer interests. We concluded that we do not expect this process to disrupt the continuity of wholesale market operations or result in any consumer detriment.

Until the effective date for revocation of its NEMO designation APX remains responsible to inform us in the event of any material changes to its initial application or issues relating to the integration and transition of operations from APX to EPEX SPOT.

Meaning and terms of a successful designation

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 permitted to perform the tasks of NEMOs set out in the CACM regulation⁶. 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 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 designation criteria and with 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 affect future decisions to be taken under and in line with the CACM regulation, for example on capacity allocation and congestion management cost recovery.⁷ 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),⁸ or 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

⁶ The criteria are set out in Article 6 of the CACM regulation. NEMO tasks are set out in Article 7 of the CACM regulation.

⁷ Title III, Chapter 3, *Costs*, of the CACM regulation.

⁸ Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency.

designating authority, the Member State where the NEMO has been designated shall ensure that designation is revoked.⁹ 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 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.¹⁰ 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.

Yours faithfully,

Mark Copley
Associate Partner, Wholesale Markets

CC: Wolfram Vogel, APX & EPEX SPOT
Olaf Islei, APX & EPEX SPOT
Joe Parsons, BEIS
Martin Povh, ACER

⁹ Article 4.8 of the CACM regulation.

¹⁰ Article 4.2 of the CACM regulation

Appendix 1 – Notice of Designation of EPEX SPOT SE

Initial Designation for the purpose of Articles 4(2), 4(4) and 9(8)(a) of the Commission Regulation (EU) No. 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(2), (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: EPEX SPOT SE, a company registered in Paris under company number 508 010 501, whose registered office is situated at 5 Boulevard Montmartre 7002 Paris (**EPEX SPOT**), 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, EPEX SPOT** 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 1 January 2017** and shall continue in force until **12:00 am on 1 January 2021**, unless renewed in accordance with paragraph 11 below.
4. The Authority may at any time by Notice revoke the Designation:
 - a) if **EPEX SPOT** agrees in writing with the Authority that the Designation should be revoked; or
 - b) if **EPEX SPOT** 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 **EPEX SPOT**
 - 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 **EPEX SPOT** is incorporated or has assets in a jurisdiction outside England and Wales and anything analogous to any of the events specified in sub-paragraph (c) occurs in relation to **EPEX SPOT** under the law of any such jurisdiction.
5. **EPEX SPOT** 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 **EPEX SPOT** 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 **EPEX SPOT** and the Authority.
7. For the purposes of paragraph 4 (b), **EPEX SPOT** 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 **EPEX SPOT** no less than [30] days' notice before the revocation takes effect.
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 [7] days' notice in writing to **EPEX SPOT** where the Authority is satisfied that there has been a material misstatement (of fact) by, or on behalf of **EPEX SPOT**, 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. **EPEX SPOT** must confirm to the Authority six months before expiry of this initial designation, on **1 July 2020**, 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, Wholesale Markets

Duly authorised on behalf of the Gas and Electricity Markets Authority
30 November 2016

Appendix 2 –Notice of Revocation of Designation held by APX COMMODITIES LIMITED

Revocation of Designation in accordance with Condition 4(a) of Notice of Designation of APX COMMODITIES LIMITED

1. By letter dated 2 August 2016, APX COMMODITIES LIMITED (**APX**), a company registered in England and Wales under company number 03751681, whose registered office is situated at 18 King William Street, London, EC4N 7BP, requested revocation of its Nominated Electricity Market Operator (**NEMO**) designation.
2. As set out in the letter attached to this appendix, dated 30 November 2016, the Gas and Electricity Markets Authority (the **Authority**) agrees in writing that the APX NEMO designation should be revoked, in accordance with condition 4(a) of the APX NEMO designation.
3. The **Authority** hereby revokes the **NEMO** designation for single day ahead and intra-day coupling held by **APX**, pursuant to condition 4(a) of its Notice of Designation dated 10 December 2015.

Effective Date and Revocation

4. The revocation shall take effect at **12:00 am on 1 January 2017**.

Mark Copley,
Associate Partner, Wholesale Markets

Duly authorised on behalf of the Gas and Electricity Markets Authority
30 November 2016