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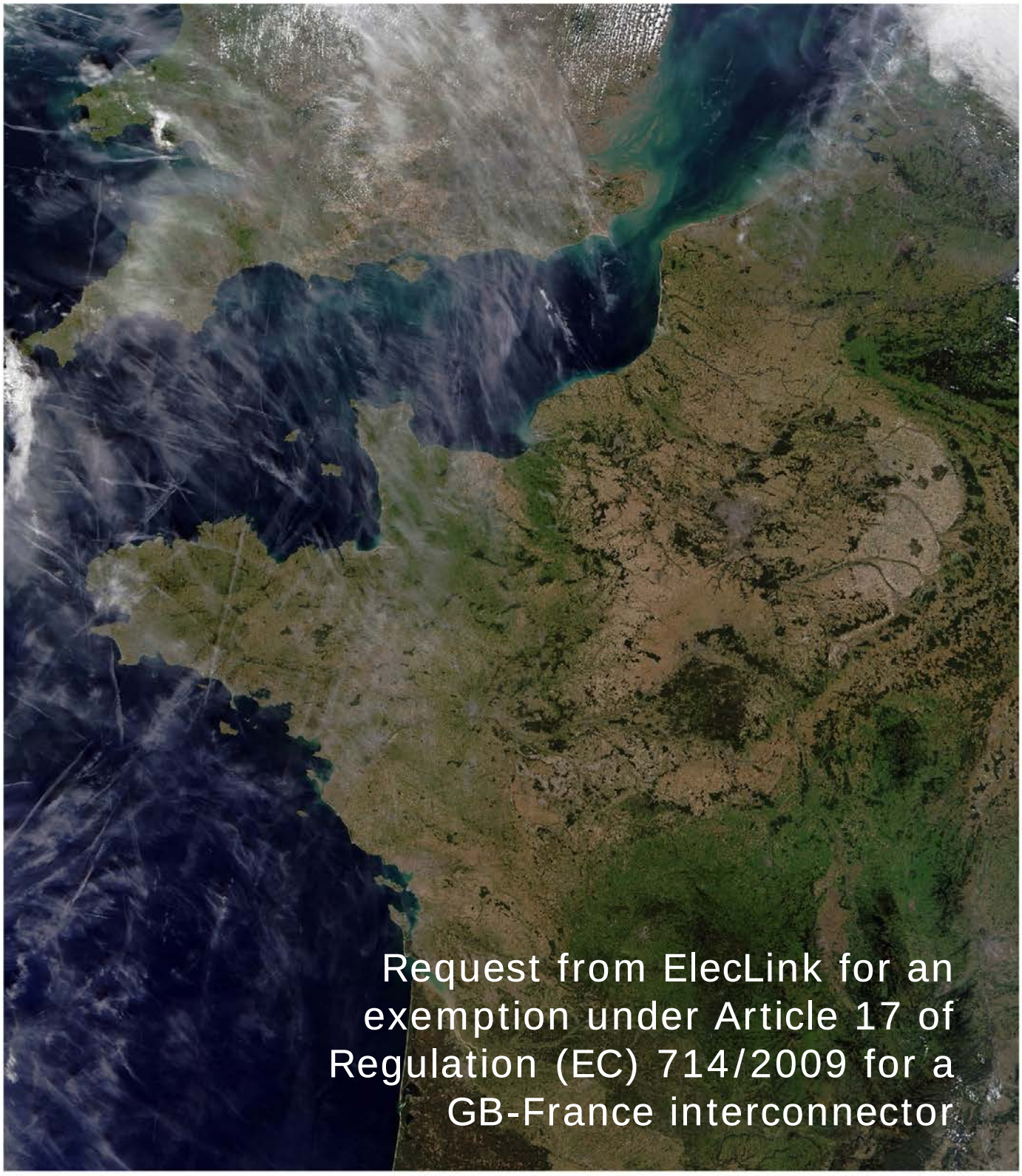
COMMISSION DE RÉGULATION DE L'ÉNERGIE

Ofgem/Commission de régulation de l'énergie joint consultation

28 November 2013



Request from ElecLink for an exemption under Article 17 of Regulation (EC) 714/2009 for a GB-France interconnector

Executive summary

Article 17 of Regulation (EC) No 714/2009 ("Article 17","the Regulation") permits National Regulatory Authorities for Energy ("NRAs") to, in agreement with any other relevant concerned NRAs, and subject to the approval of the European Commission ("the EC"), exempt new investments in cross border electricity interconnectors from legal provisions concerning third party access, regulatory approval for tariffs, use of revenue and ownership unbundling.

ElecLink Limited ("ElecLink"), a joint venture between Star Capital Partners Limited ("Star Capital") and Groupe Eurotunnel is seeking an exemption for its proposed interconnector ("the ElecLink Interconnector") between the transmission systems in Great Britain ("GB") and France. In September 2013, ElecLink submitted an exemption request under Article 17 to the concerned NRAs.

The concerned NRA 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"). The concerned NRA in France is the Commission de Régulation de l'Energie ("CRE") (together "the NRAs").

This joint consultation by Ofgem and the CRE sets out the conditions, defined by Article 17, that ElecLink must satisfy in order for an exemption to be granted. The document also outlines the evidence provided by ElecLink in its application in support of its view that it should be granted an exemption for the ElecLink Interconnector. It also seeks views from interested parties as to whether they consider ElecLink has met the exemption conditions. Moreover, additional information on the impact of ElecLink on the French and GB transmission grids and on ElecLink's economic analysis that CRE and Ofgem will take into account in their assessment has been included in the consultation document.

This document marks the start of a four week consultation. Responses would be particularly welcome to the specific questions that are set out in the appropriate sections of each chapter although we welcome respondents' views on any aspect of this document and the exemption request.

Chapter 6 provides a full list of these specific questions.

Responses should be received by 3 January 2014.

The NRAs will base any final decision they make on their analysis of the issues and responses to this joint consultation.

Associated documents

European Regulation and Directive

Regulation (EC) No 714/2009 on conditions for access to the network for cross-border exchanges in electricity:
http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0015:0035:EN:PDF

Directive 2009/72/EC concerning common rules for the internal market in electricity:
http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0055:0093:EN:PDF

Texts which have national application

Deliberation of the French Energy Regulatory Commission dated 30 September 2010 on the application of article 7 of Regulation (EC) No. 1228/2003 dated 26 June 2003 and on conditions for access to the French electricity transmission grid for new exempt interconnectors
http://www.cre.fr/en/documents/deliberations/communication/new-exempt-interconnectors-conditions-for-access-to-the-french-electricity-transmission-grid

Communication of the French Energy Regulatory Commission of 29 March 2012 on the application of Article 17 of Regulation (EC) No 714/2009 of 13 July 2009:
http://www.cre.fr/en/documents/deliberations/communication/interconnections

Decision of the French Energy Regulatory Commission dated 9 May 2012 on the conditions of connection and access to the public transmission grid of new interconnectors, mentioned in Article 17 of Regulation (EC) No
714/2009: http://www.cre.fr/en/documents/deliberations/decision/interconnections

The Standard Licence Conditions ("SLCs") applicable to an electricity interconnector licence (in Great Britain):
https://epr.ofgem.gov.uk//document/Download/28007

EC Interpretative text

Commission staff working document. Interpretative note on Directive 2009/72/EC concerning common rules for the internal market in electricity and Directive 2009/73/EC concerning common rules for the internal market in natural gas:
http://ec.europa.eu/energy/gas_electricity/interpretative_notes/doc/implementation_notes/2010_01_21_the_unbundling_regime.pdf

Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity:
http://ec.europa.eu/energy/infrastructure/infrastructure/gas/doc/sec_2009-642.pdf

Commission staff working document. Ownership Unbundling: The Commission's practice in assessing the presence of a conflict of interest including in cases of financial investors:
http://ec.europa.eu/energy/gas_electricity/interpretative_notes/doc/implementation_notes/swd_2013_0177_en.pdf

Other documents

ElecLink: Additional information to be taken into account by Ofgem in assessing the impact of the ElecLink interconnector:
https://www.ofgem.gov.uk/publications-and-updates/request-eleclink-exemption-under-article-17-regulation-ec-7142009-gb-france-interconnector

Ten-Year Network Development Plan 2012:
https://www.entsoe.eu/major-projects/ten-year-network-development-plan/tyndp-2012/

Contents

1. Introduction

Chapter Summary: An overview of the different aspects of European regulation that ElecLink has requested an exemption from and the NRAs' decision options. It also provides an overview of the exemption process and sets out the legal framework and procedure for considering and granting exemptions. In particular, it sets out the conditions which must be met for an exemption to be granted. The chapter concludes by setting out the proposed way forward and next steps in the consideration of ElecLink's exemption request.

A joint consultation by Ofgem and CRE

1.1. This is a joint consultation by Ofgem and CRE on a request from ElecLink for an exemption from certain aspects of European legislation under Article 17 of Regulation (EC) No 714/2009 ("Article 17", "the Regulation"), for a period of 25 years, for a proposed Interconnector between Great Britain ("GB") and France.

1.2. ElecLink is a joint venture project between Star Capital and Groupe Eurotunnel. ElecLink proposes to build, own and operate a new 1000MW electricity interconnector between GB and France ("the ElecLink Interconnector") which is to be sited inside the Channel Tunnel.

1.3. ElecLink has requested an exemption for a period of 25 years from aspects of European legislation which:

- govern how revenue from interconnection may be used;
- require unbundling of transmission systems and transmission system operators; and
- relate to requirements to offer terms for TPA and the need for regulatory approval of charging methodologies.

1.4. The scope, duration and rationale for ElecLink's exemption request is described further in chapter 2 below.

1.5. The proposed interconnector will connect the transmission systems in GB and France. Pursuant to paragraph 4 of Article 17, the decision on whether to grant an exemption must be agreed by the NRAs of the Member States concerned.

1.6. The exemption is subject to the fulfilment of six conditions listed in Article 17. Additional conditions may be imposed on the interconnector project if deemed appropriate by both the NRAs in order to ensure fulfilment of the exemption conditions during the whole exemption period.

1.7. This joint consultation seeks views from interested parties on ElecLink's request for exemption to inform the NRAs' decision on whether all the conditions are fulfilled, whether the exemption should be granted and whether additional conditions should be imposed.

1.8. Ofgem notes that the consultation period is 4 weeks (plus extension due to the Christmas period) rather than the usual 8 weeks. However, Ofgem considers a shorter consultation period to be appropriate and justified in this instance given the regulatory requirement to reach a decision on the exemption request within 6 months. Ofgem also notes that this is in line with its

consultation guidance[1] which allows for a four week consultation where it is working to timescales constrained by regulatory requirements.

Procedure

1.9. ElecLink submitted a request for exemption under Article 17 to the NRAs. ElecLink was formally notified of receipt of its exemption request by CRE on 11 September 2013 and by Ofgem on 18 September 2013.

1.10. In accordance with Article 17, the concerned NRAs must reach an agreement on whether the exemption should be granted within 6 months[2] of the date of receipt of the exemption request by the last of the two concerned NRAs.

1.11. Accordingly, Ofgem and CRE are required to make a decision on whether to grant ElecLink's request for exemption by 17 March 2014.

1.12. If the NRAs cannot reach agreement within 6 months, a decision on the exemption request is taken by Agency for the Co-operation of European Regulators ("ACER")[3]. The NRAs may also choose to issue a joint request to ACER that it make a decision on the exemption request instead of making the decision themselves[4].

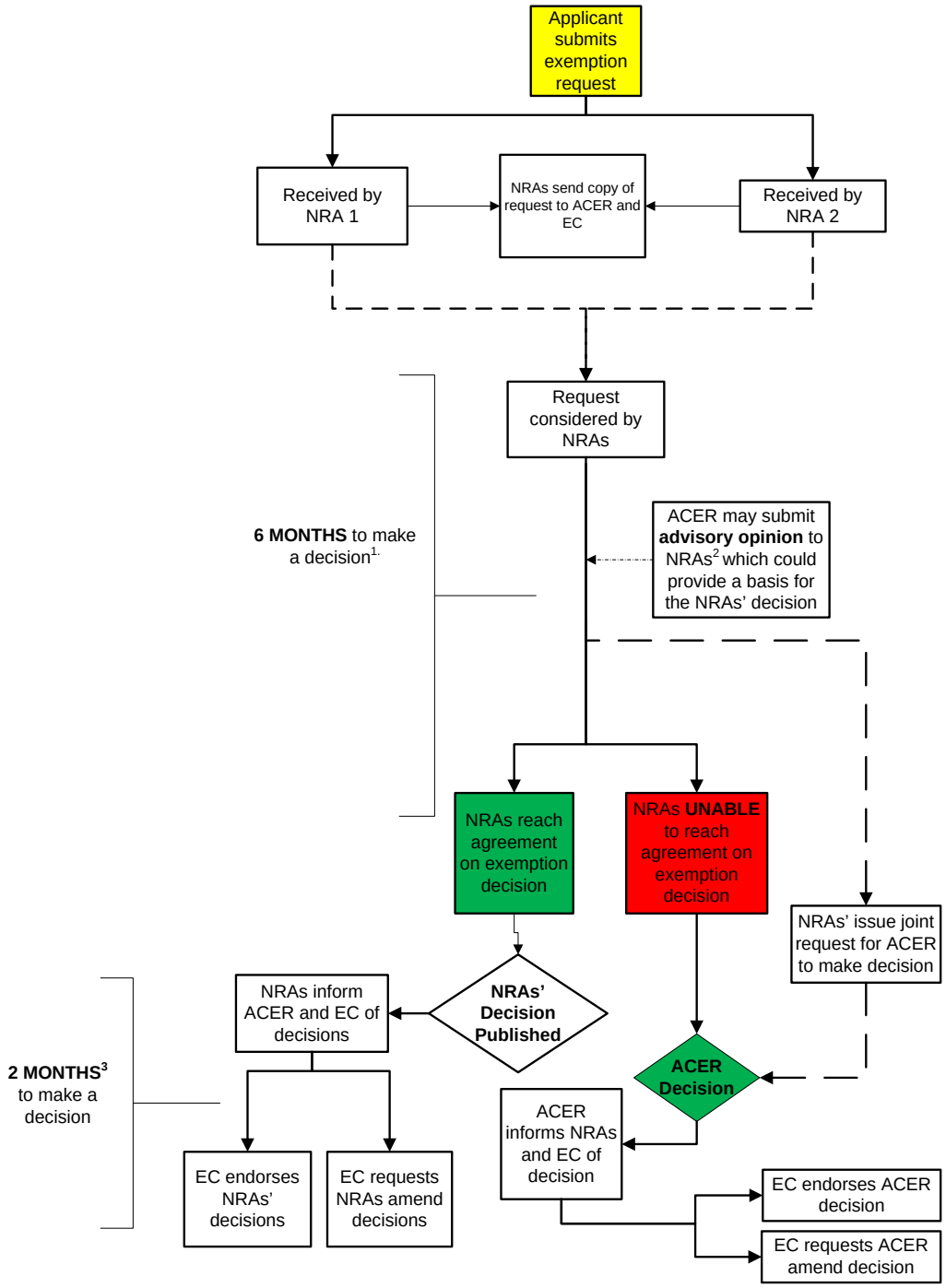
1.13. Following the NRAs' decision[5] the EC may, within 2 months from the day following receipt of notification of the decision[6], require the NRAs to amend or withdraw the decision to grant an exemption.

1.14. The Regulation also requires the NRAs to transmit a copy of any exemption request to ACER and the EC[7]. Both Ofgem and CRE sent a copy of ElecLink's exemption request to both ACER and the EC on the 18 September 2013.

1.15. Figure 1 below illustrates the process for considering exemption requests by the NRAs.

[1] Guidance on Ofgem's approach to consultation. https://www.ofgem.gov.uk/ofgem-publications/37043/guidance-ofgems-approach-consultation.pdf
[2] Article 17, paragraph 4 of Regulation (EC) No 714/2009.
[3] Article 17, paragraph 5(a) of Regulation (EC) No 714/2009.
[4] Article 17, paragraph 5(b) of Regulation (EC) No 714/2009.
[5] Or a decision taken by ACER where the NRAs are unable to reach a decision or a joint request has been made by the NRAs that ACER make the decision under paragraph 5(a) or 5(b) of Article 17.
[6] The 2 month period may be extended by a further 2 months where further information is sought by the EC.
[7] Article 17, paragraph 7 of Regulation (EC) No 714/2009.

Figure 1: Process for considering exemption requests pursuant to Article 17 of Regulation (EC) No 714/2009 for an exemption from the provisions of Article 16(6)b of the Regulation and Articles 9, 32 and 37(6) and 37(10) of Directive 2009/72/EC.



1. Note: Clock starts from date request received by the last NRA concerned
2. Within 2 months from date of receipt by the last NRA concerned
3. This 2 month period may be extended by a further 2 months where further information is sought by EC

Legislative framework: European Legislative Context

1.16. Article 17 provides that investments in new direct current interconnectors may, upon request, be exempted for a limited period of time from some or all of the following provisions in European legislation:

- **Article 16(6) of the Regulation** which governs how revenue resulting from the allocation of interconnector capacity may be used;
- **Article 9 of Directive 2009/72/EC ("the Directive")**, which stipulates that the same person cannot exercise direct or indirect 'control' over a transmission system operator ("TSO") or transmission system and at the same time exercise direct or indirect 'control' over or have any right over an undertaking performing the functions of generation or supply[8];and
- **Articles 32, 37(6) and 37(10) of the Directive,** which concern requirements to offer terms for third party access ("TPA") and regulatory approval of charging methodologies.

1.17. Paragraphs 1(a) to (f) of Article 17 specify the conditions that must be met for an exemption to be granted. These are:

(a) the investment must enhance competition in electricity supply;

(b) the level of risk attached to the investment is such that the investment would not take place unless the exemption is granted;

(c) the interconnector must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that interconnector will be built;

(d) charges will be levied on users of the interconnector;

(e) since the partial market opening referred to in Article 19 of Directive 96/92/EC, no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of the transmission or distribution systems linked by the interconnector; and

(f) the exemption is not detrimental to competition or the effective functioning of the internal electricity market, or the efficient functioning of the regulated system to which the interconnector is connected.

1.18. Paragraph 4 of Article 17 requires that the NRAs decide upon the rules and mechanisms for management and allocation of capacity prior to issuing an exemption. It also stipulates that in the NRAs' assessment of conditions (a), (b) and (f) above, the results of the capacity allocation procedure shall be taken into account.

1.19. Further details of ElecLink's assessment against each of the exemption conditions are contained in its main exemption submission attached at Appendix 1.

[8] or exercise direct or indirect 'control' over an undertaking performing the functions of generation or supply and at the same time exercise direct or indirect 'control' or exercise any right over a TSO or transmission system. These requirements are known as "ownership unbundling" requirements.

National context: Great Britain

1.20. The Authority has the ability to grant licences to electricity interconnector operators under the Electricity Act 1989 ("the Act"). The Authority granted an Interconnector licence to ElecLink on 19 November 2013.[9]

1.21. European regulations permit the Authority as the concerned NRA for Great Britain to, in agreement with the relevant concerned NRA, exempt interconnector operators from the above mentioned legal provisions.

National context: France

1.22. French legislation entrusts the electricity transmission system operator with the development, construction and operation of regulated interconnectors. Private investors can thus only construct and operate an interconnector within the context of an exemption, as provided for in Article 17.

1.23. As specified by the EC, these exemptions can only be granted in exceptional cases: in principle, new interconnection lines must be developed under the responsibility of the electricity transmission system operators in a regulated context.

1.24. In France, CRE is in charge of deciding, in agreement with the relevant concerned NRA, whether to grant exemption requests for new interconnectors.

Structure of the document

1.25. The remainder of this document is structured as follows:

Chapter 2: ElecLink's exemption request: This chapter provides an overview of ElecLink's interconnector project and outlines the information submitted by ElecLink to the NRAs in support of its exemption request. It also sets out the proposed scope and duration of the requested exemption.

1.26. The following chapters summarise the evidence presented by ElecLink in its exemption submission to demonstrate how it meets the exemption conditions.

Chapter 3: Impact on competition, internal market, regulated system: This chapter summarises ElecLink's views as to how it considers its exemption request meets conditions (a) and (f) of Article 17.

Chapter 4: Level of risk attached to proposed investment: This chapter summarises ElecLink's views as to how it consider its exemption request meets condition (b) of Article 17.

Chapter 5: General questions and other relevant exemption conditions: This chapter asks some general questions on the exemption (if granted), its duration and scope, as well as

[9] Notice of licence grant can be found here: https://www.ofgem.gov.uk/ofgem-publications/84513/eleclinklimitedelecinterconnectorlicencewebnotice.pdf

summarising ElecLink's views as to how it considers its exemption request meets conditions (c) (d) and (e) of Article 17.

1.27. In addition, Ofgem have also published a supplementary assessment of the additional information to be taken into account by Ofgem in assessing the impact of the ElecLink interconnector (draft Impact Assessment). This is provided as an associated document and has been published today on Ofgem's website.[10] This document may be taken into account in contributors' responses. Any particular remarks on this document may be sent to Ofgem.

Way forward and next steps

1.28. The NRAs invite views from interested parties on ElecLink's request for exemption and the extent to which they consider the exemption conditions have been met. The NRAs would also welcome views on potential options for ensuring that the scope and duration of any exemption is proportionate and, as far as possible, consistent with the aims of the internal electricity market.

1.29. Ofgem and CRE will need to individually satisfy themselves that all the conditions for the exemption are met in GB and France respectively. However, in line with the intention of the Regulation and as demonstrated by this joint consultation, the NRAs will coordinate their assessment of the exemption request.

1.30. Based on the NRAs' analysis of the issues and responses to this joint consultation, the NRAs may decide to:

- **Grant the exemption in full**: the scope and duration of exemption being as requested by ElecLink;
- **Grant a partial exemption**: where ElecLink is granted an exemption for some of its capacity or from some but not all requested aspects of legislation;
- **Grant a conditional exemption**: grant either a full or partial exemption subject to certain conditions that must be met by ElecLink, or
- **Refuse the exemption.**

1.31. Ofgem and CRE will publish their respective decisions, by 17 March 2014 and also notify the EC and ACER of their decisions.

1.32. Under Article 17(8) of the Regulation, the EC may, within two months of receiving notification of a decision to grant an exemption, request the NRAs to amend or withdraw their decisions. This two month period may be extended by an additional period of two months where further information is sought by the EC.

1.33. In GB, any decision to grant an exemption under Article 17 needs be given effect in the relevant electricity interconnector licence through an exemption order under SLC 12. Further details of this procedure are set out in Appendix 4.

[10] ElecLink: Additional information to be taken into account by Ofgem in assessing the impact of the ElecLink interconnector: https://www.ofgem.gov.uk/publications-and-updates/request-eleclink-exemption-under-article-17-regulation-ec-7142009-gb-france-interconnector

2. ElecLink's exemption request

Chapter Summary: An overview of ElecLink's interconnector project and outlines the information submitted to the NRAs by ElecLink in support of its exemption request. It also summarises ElecLink's rationale for requesting an exemption, including the requested scope and duration, as well as ElecLink's proposals for the allocation of its interconnector capacity.

ElecLink's interconnector project - overview

2.1. ElecLink is a joint venture project between Star Capital and Groupe Eurotunnel to build, own and operate a new 1000MW electricity interconnector between Great Britain and France, known as the ElecLink Interconnector, which is to be sited inside the Channel Tunnel.

2.2. Table 1 below provides a summary overview of the ElecLink Interconnector:

Table 1: ElecLink Interconnector overview

Developer	ElecLink Limited
Ownership	Star Capital Partners Limited (51%) & Groupe Eurotunnel (49%)
Rating	1 GW (1000MW)
Length	70 km (via the Channel Tunnel)
Connection points	GB (Sellindge substation) – France (Les Mandarins substation)
Planned commission date	Q4 2016
Project Cost	ca €400m

2.3. ElecLink states that, subject to the exemption being obtained, it is due to start construction works in 2014.

Information provided by ElecLink in its exemption request

2.4. ElecLink's exemption request consists of its main exemption submission document and a number of supporting exhibits. The main submission document sets out ElecLink's rationale for the requested exemption and summarises how it considers the relevant exemption conditions have been met.

2.5. The main document in ElecLink's exemption request is attached at Appendix 1. ElecLink has also submitted the following supporting documents:

- Exhibit A Technical study;
- Exhibit B Consents and licences;
- Exhibit C Market scenarios and revenue study (Redpoint Energy);
- Exhibit D Economic analysis and evidence (Redpoint Energy);
- Exhibit E Project financial information;
- Exhibit F References and supporting data;
- Exhibit G Capacity Allocation and Congestion Management;
- Exhibit H Impact of ElecLink, a new 1000 MW DC link between France and Great Britain, on the continental European transmission system (Consentec);
- Financial and technical proposal from RTE for connection to the French transmission grid;
- Connection agreement with National Grid Electricity Transmission plc ("NGET") for connection to the GB transmission grid.

2.6. These supporting documents contain further evidence and analysis provided by ElecLink in support of its exemption request. Some of these documents contain confidential information. The NRAs may decide to publish non confidential elements from these documents.

Scope and duration of requested exemption

2.7. ElecLink has requested an exemption from the following provisions of European legislation for a period of 25 years:

- Article 16(6) of the Regulation, which governs how revenue from interconnection may be used;
- Article 9 of the Directive, unbundling of transmission systems and transmission system operators; and
- Articles 32, 37(6) and 37(10) of the Directive relating to requirements to offer terms for TPA and the need for regulatory approval of charging methodologies.

Proposed arrangements for capacity allocation

2.8. ElecLink proposes the following arrangements for allocation of its interconnector capacity:

- 80% on long term contracts (up to 20 years); and
- 20% on short term market (day ahead and intra-day) in line with prevailing short term allocation arrangements.

2.9. ElecLink also proposes to mitigate competition issues by limiting the import capacity rights from GB to France that may be owned by any one party[11] to 50% of total capacity.

2.10. ElecLink states that it will facilitate a secondary market for capacity trading that will allow holders of long-term capacity rights to sell on such rights to other market participants. ElecLink indicates that this would occur through some form of bulletin board/exchange operated by a third party.

2.11. ElecLink also states that, in order to ensure the efficient use of the interconnector and to prevent capacity hoarding, any physical transmission rights will be subject to 'Use it or Sell It' ("UIOSI") provisions.

Rationale for exemption presented by ElecLink

2.12. In ElecLink's view the specific nature of the project coupled with the unique challenges the project faces constitute a compelling case for ElecLink to be treated as an 'exceptional case' and be granted an exemption under the Regulation.

[11] With a greater than 25% share of the generation or supply market in either Great Britain or France.

2.13. ElecLink puts forward the following rationale for requesting an exemption (see also part 3.3 of ElecLink's exemption request):

- **No recourse to regulated revenues or assets**: Application of Article 16(6) of the Regulation would compromise the required level of comfort that periods of low returns can be offset by periods of higher returns;

- **Need to use project finance**: Application of Articles 32, 37(6) and 37(10) of the Directive would compromise arrangements for project finance to be underpinned by long-term contracts and stable revenue returns;

- **Grid connections are subject to unplanned interruptions in the initial years** until such time as National Grid and RTE reinforce their respective networks. Risks arising from such unplanned interruptions cannot be mitigated or managed if the provisions of Article 16(6) of the Regulation and Articles 32, 37(6) and 37(10) of the Directive are applied;

- **Unique construction and operating risks:** There are inherent risks specific to the Channel Tunnel that cannot be mitigated or managed if the provisions of Article 16(6) the Regulation and Articles 32, 37(6) and 37(10) of the Directive are applied;

- **Exceptional market and policy risks:** The timing of its proposed interconnector project makes potential returns highly uncertain. The application of Article 16(6) of the Regulation and Articles 32, 37(6) and 37(10) of the Directive potentially limits ElecLink's ability to mitigate and manage such risks.

- **Independent and unique project shareholders:** An exemption from Article 16(6) of the Regulation and Articles 9, 32, 37(6) and 37(10) of the Directive is needed to accommodate the financing requirements of the Project and potential future investment activities of the shareholders.

- **Requires an exemption under French regulation:** French legislation entrusts the electricity transmission system operator (RTE) with the development, construction and operation of regulated interconnectors. Private investors can thus only construct and operate an interconnector within the context of an exemption. *"The project can only proceed if CRE provides ElecLink an exemption as foreseen in its Délibération of 30 September 2010[12]."*

[12] Deliberation of the French Energy Regulatory Commission dated 30 September 2010 on the application of Article 7 of Regulation (EC) No. 1228/2003 dated 26 June 2003 and on conditions for access to the French electricity transmission grid for new exempt interconnectors (30 September 2010).

3. Impact on competition, the effective functioning of the internal market and on the efficient functioning of the regulated system

Chapter Summary: Summarises ElecLink's views as to how it considers its exemption request meets the conditions that specify that:

- its proposed investment must enhance competition in electricity supply; and
- that any exemption (should it be granted) must not be detrimental to competition, the effective functioning of the internal market in electricity or the efficient functioning of the regulated systems in France and GB.

This chapter includes consideration of the impact of exemption from ownership unbundling and third party access requirements.

3.1. A key consideration in the assessment of an exemption request that must be taken into account by the concerned NRAs are the following conditions, which are specified in the Regulation:

- **Condition (a): the investment must enhance competition in electricity supply, and**
- **Condition (f): the exemption must not be to the detriment of competition or the effective functioning of the internal market in electricity, or the efficient functioning of the regulated system to which the interconnector is linked.**

3.2. In its guidance on the application of the exemption conditions[13], the EC outlines that condition (f) has similarities with condition (a) but that, in this case, "the exemption itself should not be to the detriment of the competitive functioning of the market".

3.3. CRE, in a communication of 29 March 201214, states that the analysis of condition (a) is "completed by analysis of [condition] f".

3.4. Condition (f) consists of a three part test:

- **Test 1**: the exemption is not detrimental to competition;
- **Test 2**: the exemption is not detrimental to the effective functioning of the internal electricity market; and
- **Test 3**: the exemption is not detrimental to the efficient functioning of the regulated system to which the interconnector is linked.

3.5. This chapter considers the fulfilment of conditions (a) and (f) in two parts:

[13] Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity:
http://ec.europa.eu/energy/infrastructure/infrastructure/gas/doc/sec_2009-642.pdf

[14] Communication of the French Energy Regulatory Commission of 29 March 2012 on the application of Article 17 of Regulation (EC) No 714/2009 of 13 July 2009:
http://www.cre.fr/en/documents/deliberations/communication/interconnections

- **Part 1**: Impact on competition and the internal market, and
- **Part 2:** Impact on the efficient functioning of the regulated system to which the interconnector is linked.

NRAs' approach to conducting a critical review of ElecLink's analysis and proposed capacity allocation arrangements and on measures for market protection

3.6. To support its exemption request, ElecLink commissioned Redpoint Energy Limited ("Redpoint") to undertake independent economic analysis of the impact of its proposed interconnector and provide other economic evidence in support of its exemption request. ElecLink has provided this analysis to both NRAs on a confidential basis.

3.7. To facilitate the NRAs' assessment of whether conditions (a) and (f) have been met and also assess the appropriateness of ElecLink's proposed capacity allocation arrangements and market remedies Ofgem and CRE commissioned external consultants to carry out a critical review of ElecLink's application. This analysis included Redpoint's analysis and evidence of the impact on competition, revenues and social welfare, as well as a review of ElecLink's proposed capacity allocation arrangements and measures for market protection.

3.8. Following an open tender exercise, London Economics was selected to conduct a critical assessment of ElecLink's analysis and evidence of the impact on competition, revenues (of ElecLink revenues, impact on the revenues of regulated interconnectors) and social welfare of its proposed interconnector. London Economics' summary report is attached at Appendix 2.

Part 1: Impact on competition and the internal market

3.9. The impact of ElecLink's exempted interconnector on competition and the internal market depends on several factors, including:

- The impact of increased interconnection capacity between France and GB;
- The rules for capacity allocation and congestion management; and
- The choice of unbundling regime.

3.10. Under conditions (a) and (f) it must be demonstrated that "the investment in the interconnector enhances competition in electricity supply" and that the exemption itself is not to the detriment of competition or the effective functioning of the internal market in electricity.

3.11. In a working document[15] the EC refers to elements that need to be taken into account when assessing condition (a) including:

- "As a minimum, the exempted investment must provide significantly increased opportunities for non-dominant competitors to enter the market(s) concerned or expand their market position"… "The new infrastructure should have the effect of diluting the market power of the dominant undertaking(s)" ;

[15] Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity : http://ec.europa.eu/energy/infrastructure/infrastructure/gas/doc/sec_2009-642.pdf

- The scope of the analysis needs to be adapted to the relevant wholesale and retail markets;
- "It is necessary to conduct an assessment of the probability and/or the degree of certainty of the forecasted competition effects".

Description of ElecLink's competition analysis

3.12. In its exemption request ElecLink sets out its views as to why it considers the above conditions are met.

3.13. The underlying Reference Scenario for the supporting analysis conducted by Redpoint is based on its forward looking projection of the development of electricity systems in North West Europe to 2030.

3.14. Redpoint's analysis uses the Herfindahl-Hirschman Index ("HHI") to assess the effect of the project on competition. The HHI is a measure of market concentration.

3.15. Redpoint defines some key hypotheses about the distribution of market share among generators and about the evolution of electricity demand in France and GB:

- EDF is likely to remain a dominant player in electricity generation in France into 2030 with a market share that does not fall below 87%[16]. Average HHI in French generation between 2017 and 2030 is estimated to be 0.8.
- GB's electricity generation market is characterized by low concentration with average HHI between 2017 and 2030 being 0.07 and no single market player exceeding a market share of 19% at any point.
- Peak demand is assumed to grow at two thirds of the rate of growth of total energy demand in both GB and France.

3.16. ElecLink states that it considers its proposed investment would "enhance competition in the EU electricity market in a number of ways". ElecLink summarises the enhancements to competition in electricity supply that its proposed investment would bring as follows:

Creates opportunities for economic trade between electricity markets

3.17. ElecLink notes that its proposed investment would represent a 50%[17] increase in interconnection between the French and GB electricity markets and creates opportunities for French generators to sell electricity in the GB market and for GB generators to sell electricity in the French market.

3.18. ElecLink considers the investment will result in "an increase in the number of sellers in the electricity market and lower market concentration". In turn, this increase in competition is

[16] ElecLink takes into account ARENH as follows : "Adjusting market shares in French generation for ARENH are estimated, under a 'extrapolated case' scenario, to reduce the market share of EDF to an average of 74% between 2017 and 2030 and the average HHI to 0,56." ARENH is the system of regulated access to nuclear power history established by the law of December 7, 2010, which gives the right to any provider to purchase electricity from nuclear power from EDF at regulated price. This electricity is only intended to supply end customers located in France.

[17] There is 2000MW existing interconnection capacity on the IFA interconnector between GB and France. An additional 1000MW from ElecLink would represent a 50% increase in total capacity between GB and France.

considered likely to lead to a lower mark-up of electricity prices over the marginal cost of producing electricity, which would ultimately result in lower prices for consumers.

3.19. ElecLink also states that the investment is "expected to increase liquidity in both the French and GB electricity markets by increasing the volume of electricity traded in those markets". In ElecLink's view this would result in better price formation, which provides the following benefits:

- greater price transparency for market participants;
- better price references for transactions in the forward market, leading to improved hedging and reduced risk of price distortion and market manipulation.

Reduces the ability of dominant players to exercise market power

3.20. Redpoint's supporting analysis explicitly recognises EDF's dominant position in the electricity generation sector in France.[18]

3.21. In order to address the potential for harm to competition caused by hoarding of interconnection capacity by any party in a dominant position ElecLink proposes to limit the import capacity rights from GB to France that may be owned by any party[19] to 50% of its total capacity.

3.22. ElecLink notes that its proposed limit on import capacity is significantly lower than the 70% limit Redpoint's analysis suggests as an appropriate limit "to ensure market concentration in electricity generation in France is reduced in all years between 2017 and 2030 regardless of how the remainder of ElecLink capacity is allocated."

3.23. ElecLink considers that setting the GB to France import capacity limit at 50% rather than the 70% limit suggested by Redpoint's analysis would ensure that "the effect of ElecLink on market concentration in the French generation sector remains positive under a wide range of outcomes that differ from the Reference scenario assumptions".

Enhances competition by creating choice and competition in cross border transactions

3.24. ElecLink states current interconnection between GB and France is dominated by the IFA interconnector[20] and that introduction of the proposed ElecLink interconnector will enhance competition in interconnection between GB and France. It also suggests that, in the absence of ElecLink, proposals for a second interconnector between GB and France (IFA 2)[21] would further compound existing dominance by RTE and National Grid on the border between GB and France.

3.25. ElecLink considers the increased competition resulting from the introduction of the ElecLink interconnector will drive down the costs of transmitting electricity between GB and France thereby indirectly enhancing competition in electricity supply by providing parties seeking to sell electricity in either GB or France with more choice and by lowering associated costs.

[18] ElecLink suggests that the market share of EDF in electricity generation in France would be around 91% by 2017 before taking into account the effect of market power remedies under NOME law and 74% after taking those measures into account. (NOME: Nouvelle Organisation du Marché de l'Électricité. French law passed in December 2010 deciding allocation of up to 100 TWh of nuclear electricity to alternative suppliers at a regulated price.)
[19] With a greater than 25% share of the generation of supply market in either Great Britain or France.
[20] 2GW interconnector between GB and France owned and operated by National Grid and RTE.
[21] IFA 2 – a proposed interconnector between GB and France to be commissioned in 2020.

3.26. ElecLink further states that in the context of interconnection between GB and continental Europe, ElecLink is a 'unique independent player' in the market. Noting that the existing IFA and BritNed interconnectors as well as the planned NEMO interconnector are all co-owned by National Grid[22] together with the respective national TSOs.

Question 1: Do you consider ElecLink's proposed investment enhances competition in electricity supply and therefore meets condition (a)?

Question 2: Do you consider the exemption requested by ElecLink would not be to the detriment of competition and that it therefore meets test 1 of condition (f)?

Question 3: Do you consider the exemption requested by ElecLink would not be to the detriment of the effective functioning of the internal market in electricity and that it therefore meets test 2 of condition (f)?

3.27. ElecLink's views as to how an exemption would not be detrimental to the efficient functioning of the regulated system to which the interconnector is linked (test 3) is addressed in part 2 of this Chapter.

Review of competition analysis

3.28. We note that analysis of the competitive impact of ElecLink in GB and France is primarily based on calculations of market shares and HHI. An alternative measure for assessing competition in electricity markets could be based on pivotality and indicators such as the Residual Supplier Index (RSI).

3.29. Although both market shares and HHI are useful in considering the impact of ElecLink in both markets, they may underestimate firms market power (eg the ability of firms to increase prices during periods of peak demand).

3.30. Analysis based on electricity-specific concentration indicators such as the Pivotal Supplier Index (PSI) and/or the Residual Supplier Index (RSI) may add interesting information for assessing competition in electricity markets.

Testing of market demand

3.31. In its exemption request ElecLink notes that the Recitals[23] to the Regulations refer to the need to test market interest during the project planning phase.

3.32. The NRAs note that the EC staff working paper[24] on new infrastructure exemptions states that project promoters are required to test market demand before they can obtain an exemption. The working paper stresses that testing market demand is a critical element in evaluating the

[22] National Grid Interconnector Limited (NGIL) – NGIL jointly own and operate the IFA interconnector (with the French Transmission System Operator, RTE). National Grid International Limited owns a 50% share in the joint venture BritNed Development Limited that operates the BritNed interconnector (a joint venture with the Dutch Transmission System Operator, TenneT). National Grid Nemo Link Limited jointly owns the proposed NEMO interconnector (with the Belgian TSO, Elia).

[23] Recital 23 of the Regulation.

[24] Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity: http://ec.europa.eu/energy/infrastructure/infrastructure/gas/doc/sec_2009-642.pdf

riskiness of a project and assessing the extent to which the planned project enhances competition and security of supply.

3.33. ElecLink states that it has undertaken an initial market testing exercise involving discussions with potential customers and selected industry stakeholders. It further states that its initial market testing indicates that potential customers are seeking to buy physical or financial rights and that there was a tendency for:

- utilities to express a preference for physical rights, and
- financial players to express a preference for financial rights.

3.34. ElecLink therefore proposes to structure its capacity contracts as set out in page 16 and 17 of its main exemption submission.

3.35. ElecLink confirms that it expects to consult further with potential customers on the form and duration of long-term contracts as well as on its proposed short-term congestion management arrangements. It envisages this consultation process to run from Q3 of 2013 through to Q1 of 2014.

3.36. The NRAs may seek further information from ElecLink regarding its market testing.

Question 4: Do you consider ElecLink has provided sufficient information on demand for its interconnector capacity between France and GB?

Third Party Access

3.37. Third Party Access ("TPA") and more widely the way market players will be able to use ElecLink will have an impact on competition and on the functioning of the internal market. The European target model for electricity has been developed to address these issues and to establish a well functioning internal electricity market.[25]

3.38. It should also be noted that CRE's Communication of 29 March 2012 on the application of Article 17 of the Regulation[26] provides that "CRE will pay particular attention to the effect of allocation of very long term products (pluriannual) on the functioning of the markets and on competition (if the applicant wishes to propose this type of product), and to the effect of priority access granted to a dominant player (shareholder or not)."

3.39. ElecLink states its proposed capacity allocation and congestion management arrangements would ensure that the interconnector would have a positive impact on competition.

[25] The European Target Model is set out in the Framework Guideline on Capacity Allocation and Congestion Management for Electricity (CACM FG) published by the Agency for the Cooperation of Energy Regulators (ACER) in July 2011. http://acernet.acer.europa.eu/portal/page/portal/ACER_HOME/Public_Docs/Acts%20of%20the%20Agency/Framework%20Guideline/Framework_Guidelines_on_Capacity_Allocation_and_Congestion_M/FG-2011-E-002%20(Final).pdf

[26] Communication of the French Energy Regulatory Commission of 29 March 2012 on the application of article 17 of Regulation (EC) No 714/2009 of 13 July 2009. http://www.cre.fr/en/documents/deliberations/communication/interconnections

3.40. ElecLink explains in its request for exemption that 80% of the capacity could be allocated in the form of long-term products (longer than day-ahead and intraday maturity) through an Open Season procedure.[27]

3.41. According to ElecLink, multi-year products are required to raise no recourse project finance debt since "lenders give no value to un-contracted capacity in their cash-flow analysis". ElecLink expects the maximum duration of these products to be 20 years, and the average duration 15 years.

3.42. Capacity allocated via Open Season procedures (which do not exist in the framework of the European target model for electricity) and particularly the split of capacity between different timeframes of these multi-year products could raise a competition issue e.g. very long-term products are more likely to be bought by major players.

3.43. ElecLink also explains its intention to reserve 20% for short-term allocation (day-ahead and intraday).

Question 5: Do you consider such long-term products would be necessary to raise financing for the project?

Question 6: Analysis conducted by London Economics shows that the price of capacity for long-term contracts may be significantly higher than those assessed by ElecLink. Do you think any limit of capacity sold on multi-year products should be based on the actually contracted revenues or on a maximum volume or on any other basis?

Question 7: Would you be interested in having capacity reserved for shorter-term timeframes (either yearly, monthly, or day-ahead) and allocated through regulated rules based on the European target model for electricity?

Question 8: Would you be interested in multi-year products allocated through an Open Season? If so please provide detail if possible on how much, for which duration, contacts initiated with ElecLink, on which price basis per MWh? Answers to this question would be considered as confidential.

Question 9: In your view, how should the capacity be allocated:

a) the Open Season (one long-term allocation before the interconnector becomes operational); or b) periodical allocations of standard long-term products as defined by the European target model for electricity)?

What should in your view be the split of the foreseen capacity between these two mechanisms?

Question 10: What would in your view be the most appropriate split of capacity (please answer in MW among the following: day-ahead, monthly, yearly, less than 5 years products, 5 to 20 years products).

3.44. ElecLink suggests that multi-year products could be allocated in different forms depending on the holder, i.e. Financial Transmission Rights ("FTRs") and Physical Transmission Rights ("PTRs") or that rights with different degrees of firmness may coexist for the same delivery period. Although mixing the two types of products on a single border is not permitted in the draft Forward

[27] A procedure for testing market demand.

Capacity Allocation Network Code[28], this is in the scope of the exemption requested by ElecLink to Article 32 of the Directive.

Question 11: Do you think it appropriate to consider different types of products (PTRs or FTRs) for the same delivery hour?

3.45. ElecLink intends to follow the spirit of the European electricity target model for short-term allocation (daily and intra-daily), for instance on firmness issues though, nothing is said about yearly and monthly allocation. Moreover, the firmness of multi-year products is still open.

Question 12: Do you consider it appropriate for there to be a lower degree of firmness for multi-year products?

Question 13: Do you consider it important (especially, but not only, for the secondary market), that the firmness of multi-year products would improve when coming closer to delivery time?[29]

3.46. ElecLink recognises that there could be a competition issue and has proposed that no dominant market player may hold more than 50% of the ElecLink GB to France total capacity. ElecLink has proposed a definition[30] of dominant market player.

Question 14: In your view, would such provisions allow for a sufficient level of competition?

3.47. ElecLink propose to organise an Open Season to allocate capacity through long-term products. ElecLink has not provided much clarity on the way it would organise this.

Question 15: In your view, what criteria should be looked at to authorise a market player to participate in the Open Season?

Questions 16: What information should be publicly available concerning the selection criteria and results of the Open Season (name of the holder of the long-term capacity, amount, and price paid for it)? Would publication of aggregated information be appropriate?

3.48. In terms of balancing, ElecLink's proposal is not very clear about the way remaining capacity after intraday would be dealt with for cross-border balancing purposes. Cross-border balancing exchanges are however foreseen in the European target model.

Question 17: Do you consider it important that remaining capacity after intraday allocation could be used for balancing exchanges? If so, how could this be managed most efficiently?[31]

Ownership unbundling

3.49. Article 17 allows exemption for a new interconnector from Article 9 of the Directive. This article firstly stipulates that "*each undertaking which owns a transmission system acts as a*

[28] https://www.entsoe.eu/major-projects/network-code-development/forward-capacity-allocation/
[29] For instance a 10 year product allocated in 2015 could have, after the yearly allocation for 2018, a firmness concerning the 2018 deliveries upgraded to the yearly products firmness
[30] According to ElecLink, *"A dominant party in this context is used to denote a party with a greater than 25% share of the generation or supply market in either GB or France".*
[31] For example, one option could be for remaining capacity to be managed directly by the two TSOs, with ElecLink being only a cross-border capacity provider.

transmission system operator" and secondly sets out specific measures for the "unbundling" of on the one hand generation and supply activities and on the other hand the activities of a transmission system operator ("TSO")[32] or a transmission system.

3.50. The exercising of certain functions relating to the management of an interconnector by entities associated with a company exercising electricity supply or generation activities[33], may be to the detriment of competition, particularly as a result of access to information that is privileged and/or commercially sensitive, and also through the possibility of influencing strategic decisions. These potential consequences need to be borne in mind in considering whether an exemption under Article 17 in respect of the unbundling requirements in Article 9 should be granted to a particular interconnector project.

ElecLink's rationale for exemption from the ownership unbundling requirements

3.51. ElecLink has requested an exemption from the ownership unbundling requirements set out in Article 9(1) of the Directive. In particular, ElecLink refers to provisions contained in Article 9(1) (b), (c) and (d) relating to restrictions on board member appointments and exercising of voting rights. In its view restrictions of this kind would "prove problematic and unnecessarily limiting" to ElecLink's shareholders.

3.52. ElecLink further states that energy infrastructure projects do not comprise the core business of its shareholders and that its shareholders require an exemption from unbundling requirements "in order to retain the flexibility to invest in future independent projects and to ensure that the obligations imposed on us in respect of our operation of the ElecLink interconnector are appropriate and proportionate".

3.53. ElecLink states that as at 30 June 2013, neither of ElecLink's shareholders has any links to energy producers or suppliers except in the capacity of consumers of electricity and gas.

3.54. However, ElecLink indicates that Star Capital is currently considering a small investment in the generation of electricity from renewable sources.

3.55. ElecLink considers any future energy related investments that its shareholders may make would provide minimal scope for discrimination or a conflict of interest "given the likely value and nature of the participation in such activities and the likely size and market share of any such generation and/or supply activities".

Consideration of ElecLink's ownership unbundling exemption request

3.56. If the exemption from Article 9 of the Directive is refused by the NRAs, ElecLink would have to respect the provisions of this Article that relate to the "unbundling of transmission systems and transmission system operators".

3.57. Should the NRAs consider it appropriate to grant an exemption it may be framed by conditions defined in the NRAs' decision. ElecLink may therefore be subject to measures guaranteeing, in particular, the independence of entities exercising certain functions relating to the management of the new interconnector.

[32] TSO is defined in paragraph 4 of Article 2 of the Directive.
[33] such as the allocation and management of capacity (and where applicable the management of auction procedures), the management of commercially sensitive information, operation and maintenance.

3.58. In the event that an exemption from Article 9 is granted a dissociation regime (based on the principles of the ring-fencing models set out in the Directive)[34] may, if considered appropriate, be defined in the NRAs' decisions as an alternative to the unbundling regime for the duration of the exemption. Such a regime may provide guarantees concerning, in particular, non-discriminatory third party access, the independence of the operator/owner of the interconnector and the protection of commercially sensitive information. However, we note that on the date of expiry of any exemption from Article 9, ElecLink would be required to comply with the rules on ownership unbundling and be certified accordingly.

3.59. The analysis of the effect of the exemption on competition and on the efficient functioning of the internal market in electricity shall take into account the identity of the applicant and its shareholders, the provisions associated with the role of the TSO to which an exemption is requested, as well as the requested unbundling dissociation regime. It shall also take into account the rules proposed for management and allocation of interconnection capacity.

3.60. The issue of how the rules on ownership unbundling as set out in Article 9 of the Directive are to be applied in situations where a shareholder in a TSO also participates in generation, production and/or supply activities, is addressed in:

- the Commission staff working paper of 22 January 2010[35]: "*interpretative note on Directive 2009/72/EC concerning common rules for the internal market in electricity and Directive 2009/73/EC concerning common rules for the internal market in natural gas*" (hereafter the Commission staff working paper of 22 January 2010);

- the Commission staff working document of 8 May 2013[36]: on "*the commission's practice in assessing the presence of a conflict of interest including in case of financial investors*" (hereafter the Commission staff working document of 8 May 2013).

3.61. The Commission staff working document of 8 May 2013 provides that*: "Article 9(2) Electricity and Gas Directives does not exclude the holding of purely passive financial rights related to a minority shareholding, i.e. the right to receive dividends, without any voting rights or appointment rights attached to them."* According to the Commission staff working paper of 22 January 2010 *"the concept of voting rights refers to any voting rights, no matter how limited including voting rights which do not amount to control. In practice the requirements of Article 9(1)(b) Electricity and Gas Directives can be complied with as follows.*

A supplier can keep a direct or indirect shareholding in a network operator or in a network system, provided the following cumulative conditions are met:

(i) this shareholding does not constitute a majority share;

(ii) the supplier does not directly or indirectly exercise any voting rights as regards his shareholding;

[34] the Independent Transmission Operator, set out in Chapter V of the Directive; and
the Transmission Owner / Independent System Operator, set out in Articles 13 and 14 of the Directive

[35] Commission staff working document. Interpretative note on Directive 2009/72/EC concerning common rules for the internal market in electricity and Directive 2009/73/EC concerning common rules for the internal market in natural gashttp://ec.europa.eu/energy/gas_electricity/interpretative_notes/doc/implementation_notes/2010_01_21_the_unbundling_regime.pdf

[36] Commission staff working document. Ownership Unbundling: The Commission's practice in assessing the presence of a conflict of interest including in cases of financial investors:
http://ec.europa.eu/energy/gas_electricity/interpretative_notes/doc/implementation_notes/swd_2013_0177_en.pdf

(iii) the supplier does not directly or indirectly exercise the power to appoint members of bodies legally representing the network operator or the network system such as the supervisory board or the administrative board, and

(iv) the supplier does not directly or indirectly have any form of control over the network operator or the network system.

Reciprocally, a transmission network operator may keep a direct or indirect shareholding in a supplier, provided the following cumulative conditions are met:

(i) this shareholding is not a majority share;

(ii) the network operator does not directly or indirectly exercise any voting rights as regards its shareholding;

(iii) the network operator does not directly or indirectly exercise the power to appoint members of bodies legally representing the supplier such as the supervisory board or the administrative board, and

(iv) the network operator does not directly or indirectly have any form of control over the supplier.

Similar rules apply to the presence of a parent company, such as a holding company: a parent company is not entitled to exercise control over a supplier, and directly or indirectly exercise control or exercise any right over a TSO or over a transmission system. Nor is a parent company entitled to exercise control over a TSO or a transmission system, and directly or indirectly exercise control or any right over an undertaking performing any of the functions of generation or supply (Article 9(1)(b)(i) and (ii) Electricity and Gas Directives)."

3.62. Furthermore, the Commission staff working document of 8 May 2013 provides that "in some cases it may not be straightforward to establish whether or not a conflict of interest exists in case a shareholder with a participation in generation, production and/or supply activities has invested in a TSO. […] It is for the TSO to be certified to bring to the attention of the regulatory authority, where appropriate, that even though one or more of the circumstances set out to in Article 9(1)(b), (c) and/or (d) of the Directive may arguably be present, no conflict of interest exists in the particular case. […] Several elements could be of relevance for this case-by-case assessment, such as for instance the geographic location of the transmission activities and the generation, production and/or supply activities concerned; the value and the nature of the participations in these activities, as well as the size and market share of the generation, production and/or supply activities. […] This list is indicative and not exhaustive, and none of these elements is necessarily decisive on its own."

Relevant producer or supplier test – GB context

3.63. In GB the grounds for certification and the ownership unbundling requirements set out in the Directive have been transposed through national regulations[37], which insert new sections (10A to 10O) into the Electricity Act 1989 ("the Act").

[37] The Electricity and Gas (Internal Markets) Regulations 2011.

3.64. Ofgem notes that the 'relevant producer or supplier' test in GB (described in Appendix 4) inherently allows for some de-minimis investments in small scale generation to be made without breaching the ownership unbundling requirements under the Act.

3.65. Section 10O of the Act specifies the criteria to be applied when determining whether an undertaking 'performing any of the functions of generation or supply' as referred to in Article 9 of the Directive constitutes a 'relevant producer or supplier'.[38] Amongst other things, the 'relevant' test includes considering:

- whether any such undertaking holds, or would require a licence under section 6 of the Act or section 7A of the Gas Act 1986 to carry out their activity in GB, and
- the scope for discrimination between the undertaking and the person appying to be certified.

  In this context, Ofgem notes that some investment in small scale generation may still be permissible in GB without an Article 9 exemption provided there is no scope for discrimination.

3.66. Further details on GB specific grounds for certification and the ownership unbundling requirements as transposed in GB are set out in Appendix 4.

Requirements under Article 12 of the Directive

3.67. The NRAs note ElecLink's concerns that Article 9(1)(a) of the Directive is drafted such that ElecLink would be "categorised as a TSO with associated obligations". The TSO obligations are set out in Article 12 of the Directive.

3.68. ElecLink considers requirements under Article 12 to be "inappropriate and potentially onerous for an operator with a single transmission asset" such as itself.

3.69. In Article 3.4 of its main exemption submission ElecLink makes reference to the specific provisions in Article 12 of the Directive that it considers inappropriate given that it is single transmission asset.

3.70. The proposed ElecLink interconnector is a single 'point-to-point' interconnector, which will be owned and operated as such, and in this respect it differs from a national TSO.

3.71. It should be noted that ElecLink would still be required to comply with Article 12 tasks to the extent that they apply to a single 'point to point' interconnector such as the proposed ElecLink Interconnector.

Ofgem specfics on Article 12 transposition

3.72. In GB, specific duties corresponding to relevant requirements of Article 12 are imposed on ElecLink through certain Standard Licence Conditions (SLCs) in its electricity interconnector licence. These SLCs are outside the scope of ElecLink's exemption request and as such the requirements therein will be applicable to ElecLink.

[38] Subsections (4) and (5) of Section 10O of the Act.

3.73. The SLCs of its interconnector licence require ElecLink to cooperate with National Grid Electricity Transmission plc ("NGET") as GB system operatorand to facilitate the performance of other Article 12 tasks at the interconnection point in GB. NGET performs Article 12 tasks that are relevant to the GB transmission system and performs certain tasks to coordinate GB TSOs.

3.74. For the avoidance of doubt, Ofgem has set out in Appendix 4 a table that lists the tasks that ElecLink, as an electricity interconnector licensee, is required to fulfil in compliance with Article 12, with specific reference to where these provisions are found in the GB legislation and the interconnector licence.

Questions:

ElecLink considers that an exemption from the unbundling obligations in Article 9 is necessary to allow STAR Capital to retain the flexibility to invest in future energy projects.

Question 18: Do you consider that such exemption is necessary? Please take into account the two Commission staff working papers on how the rules on OU are to be applied, and where applicable, the GB relevant supplier test.

Question 19: If you consider an exemption from Article 9 to be appropriate, should such an exemption be:

(a) granted in full with no conditions imposed by the NRAs?

(b) granted subject to additional conditions imposed by the NRAs?

Question 20: Should an exemption subject to addtional conditions be deemed appropriate what conditions do you consider it would be appropriate for the NRAs to impose?

In the case of a such an exemption, the NRAs may, if they deem it appropraite, include relevant provisions from, or similar to, those contained in the two main separation models described in the Directive, which constitute alternatives to the main unbundling regime:

- *the Independent Transmission Operator, set out in Chapter V of the Directive; and*
- *the Transmission Owner / Independent System Operator, set out in Articles 13 and 14 of the Directive.*

Question 21: Do you consider inclusion of such provisions necessary to ensure the exemption is not detrimental to the effiicient functioining of the internal market?

Question 22: Do you consider inclusion of such provisions would be enough to ensure the exemption is not detrimental to the effiecient functioining of the internal market?

Question 23: Do you consider inclusion of any such provisions may be harmful for ElecLink's interconnector project?

Part 2: Impact of exemption on the regulated system

3.75. The fulfillment of condition (f) implies analysing the impact of the exemption itself, and not the investment, on the effective functioning of the regulated system to which the interconnector is linked.

3.76. Indeed, the connection of a new interconnector may generate congestion on the regulated network. This may be solved by reinforcement of the regulated network, or by other measures such as redispatching[39]. The potential costs of these would be borne by the network users through an increase in network tariff.

3.77. Moreover, a new interconnector will, in most cases, generate a decrease of the congestion rent on other regulated interconnectors between the same markets. As the regulated congestion rent is to be used to maintain available interconnection capacity and/or increase interconnection capacity, such decrease can be considered as a cost for grid users.

3.78. These costs (congestion costs, congestion rent decrease) have to be compared to profits pulled by ElecLink's projected additional interconnection capacity: such as price convergence and mutualisation of production which may lead to a reduction in CO2 emissions enhanced security of supply.

3.79. ElecLink considers that the project will bring "considerable benefits in terms of security of supply, competitiveness and sustainability of the electricity markets in both France and GB and argues "congestion studies carried out by Consentec for the French Grid and NGET for the GB grid did not demonstrate any material increase in congestion as a result of ElecLink".

3.80. The cost-benefits analysis provided by ElecLink is estimated for the first part of the exemption period requested by ElecLink (2016-2030) for France and GB. The effect of the project on other interconnectors between France and GB is presented separately and the welfare of ElecLink is not included in the social welfare estimation.

3.81. The main benefits of the project mentioned by ElecLink are[40]:

- "over €640million of net social benefit" – net social benefit being calculated as the sum of producers' welfare and consumers' welfare only in France and GB;
- net gains of generation costs of €284 million in France and GB ;
- "contribution to decarbonisation" with an estimated carbon reduction of 6.1 million tonnes. The corresponding saving (calculated through market price of CO2) is already included in the estimation of social welfare;
- "greater security of supply through the pooling of energy, reserve and other balancing services between the two markets" which will "enable France and GB to pool reserve capacity, reducing the future peaking plant requirement";
- "cross border integration of energy markets" .

3.82. Net social welfare is calculated as the sum of producers' welfare and consumers' welfare. Consumers' welfare is calculated through the differential of prices resulting from the project: consumers take advantage of the interconnection if the price resulting from the exchange is lower

[39] Redispatch generation pattern to reduce a congestion
[40] Others benefits are listed on page 10-11 of the main document supporting the exemption request, provided in Appendix 1.

than the initial price. Producers' welfare is calculated as the difference between the wholesale revenue of generators minus the generation costs.

3.83. As mentioned by ElecLink, these estimations are based on the same hypotheses are those used to define the central scenario which are briefly discussed in Chapter 4 and which have been subjected to critical review by the consultant engaged by the NRAs (see Appendix 2).

3.84. Concerning the costs incurred by ElecLink on the regulated system, ElecLink presents two types of costs:

- decrease in net congestion revenues attributable to IFA 1 and IFA 2 (current and future interconnectors between France and GB of respectively 2000 and 1000 MW, IFA2 being foreseen for 2022) of €81million (real 2011 prices) between 2016 and 2030, which represent an opportunity cost for network users as explained above;
- For the French border, ElecLink assesses that the reinforcement costs necessary to ensure firmness to ElecLink could be up to €120 million, but that there could be an alternative option, which leads to an expected curtailment of 7 GWh / year.
- For the GB border, ElecLink assesses that the reinforcement solution of the grid system, if any, has yet to be defined.

3.85. CRE has asked RTE to provide information on the costs that would be borne by grid users for congestion generated by ElecLink during the whole exemption period. RTE's report, which is set out in more detail in Appendix 3, suggests that congestion generated by ElecLink on the French grid would be largely diminished by reinforcements already planned in the North of France, even if some local constraints will lead to residual reinforcements on the axe 400kV Attaques-Warande-Mandarins (estimated to be around €3 million per year) associated with a specific automaton allowing RTE to disconnect ElecLink in a post-fault action (only if huge grid unavailability is observed). The cost of this solution will be mutualised through the network tariff.

3.86. Ofgem notes that NGET considered a range of connection options for ElecLink and determined that a connection at the Sellindge substation would be the most appropriate connection option, with the connection being on a non-firm[41] basis until 2023. Ofgem also note that Sellindge is ElecLink's preferred connection point given the proximity of the substation to the Channel Tunnel. Ofgem further notes that ElecLink, as the holder of an interconnector licence, will be required to comply with the applicable requirements of the relevant industry codes in GB[42], including Grid, Connection and Use of System and Balancing and Settlement Codes. This should ensure that ElecLink operates the interconnector in a manner consistent with other transmission system users in GB.

Question 24: Do you consider the exemption requested by ElecLink would not be to the detriment of the efficient functioning of the regulated systems to which the interconnector is connected and that it therefore meets test 3 of condition (f)?

[41] Firmness relates to level guaranteed access to capacity
[42] As required by SLC 3: (Compliance with codes) of ElecLink's interconnector licence.

4. Level of risk attached to investment

Chapter Summary: Summarises ElecLink's views as to how it considers its exemption request meets the condition of exemption that stipulates that the level of risk attached to the investment is such that the investment would not take place unless the exemption is granted.

4.1. In order for condition (b) to be satisfied the level of risk attached to the investment must be such that the investment would not take place unless an exemption is granted.

4.2. In the French legal context, the interpretation of this condition is twofold. First, ElecLink needs to prove that it takes risks that allow for proposing a project which is more attractive for the community than what is currently proposed by regulated TSOs. Second, the exemption scope and duration need to be proportionate to risk taken by ElecLink.

4.3. Indeed, only RTE may develop and operate regulated interconnectors in France. In a deliberation of 29 March 2012[43] CRE stated that: *"In theory, criterion b) could be satisfied by a project for a new interconnector if no similar regulated project for the development of exchange capacities exists. Any regulated project with a comparable effect on the markets in question and a comparable level of maturity may be considered as similar to a project for a new interconnector. In particular, criterion b) may be considered to be satisfied if a regulated project to develop exchange capacities would exist, but whereby the acceptance of a greater risk by the exemption applicant would enable him/her to propose a project which is more attractive for the community."*

4.4. The only existing interconnection between France and GB is the IFA interconnector, which is a 2000 MW high voltage direct current (HVDC) link between the French and GB transmission systems commissioned in 1986. It is owned and operated by a subsidiary of National Grid, National Grid Interconnectors Limited and RTE. On the French part the payback of costs is levied on users through tariffs, whereas on the English part the revenues come from congestion rents.

4.5. Two other projects are proposed on this border besides ElecLink. The first one is IFA 2, a project between National Grid Interconnectors Limited and RTE. This project has been granted Project of Common Interest ("PCI") status[44]. This proposed project of 1000 MW is currently planned to be commissioned in 2020.

4.6. France-Alderney-Britain is the second project proposed on the border. This project, which has been granted PCI status is a joint investment between the developers of the interconnector project, Fablink, and RTE, the French system operator.

4.7. The second proposed project is planned to be commissioned after 2020, with a proposed capacity of between 1000 MW and 1400 MW.

[43] Communication of the French Energy Regulatory Commission of 29 March 2012 on the application of Article 17 of Regulation (EC) No 714/2009 of 13 July 2009: http://www.cre.fr/en/documents/deliberations/communication/interconnections

[44] Further details on PCI projects can be found here: http://ec.europa.eu/energy/infrastructure/pci/pci_en.htm

Question 25: Taking into consideration existing and planned regulated interconnectors between France and GB, do you consider that the risk attached to ElecLink's project is such that the investment would not take place unless an exemption is granted and that it therefore meets condition (b) of Article 17?

4.8. ElecLink is seeking an exemption to manage risks associated with the specific nature of the project and to ensure ElecLink can be project financed. ElecLink faces construction and operating risks specific to the Channel Tunnel. Moreover, its grid connections are subject to unplanned interruptions in the initial years and it faces market and energy policy risks. Finally, the project holders intend to finance the project partly through non-recourse project finance debt. ElecLink argues that the individual and combined magnitude of these risks is significant. (Further details are set out in ElecLink's exemption request attached at Appendix 1.) For this reason, ElecLink requests an exemption from regulation on the use of congestion rent.

4.9. In particular, ElecLink is requesting an exemption from Third Party Access rules in order to sell 80% of the Interconnector's capacity as up to 20-year products. If the exemption is granted, ElecLink will sell long-term interconnector capacity contracts to generate a stream of predictable cashflows on which lenders will issue a finite amount of debt on inception.

Reference scenario

4.10. ElecLink presents financial projections based on RedPoint's Energy Market and Revenue Study and ElecLink's assessment of Long term contract revenues, and Construction, Maintenance and Operational costs.

4.11. The Redpoint Reference scenario is intended to reflect a steady-state evolution of the market, based on consensus and referenceable assumptions where possible. The scenario is designed to balance the three pillars of energy policy in Europe (Competitiveness, Security of supply, and Sustainable development).

4.12. ElecLink states that "At the heart of the Redpoint Reference scenario is the decarbonisation of the power sector in North West Europe. This is pursued in the long term, well beyond the timeframe of the current Climate Change Directive. Decarbonisation is achieved through market-based mechanisms (the EU ETS) and through approved subsidy regimes. There is a divergence in the rate of decarbonisation (and success in meeting European objectives) in the Redpoint Reference scenario between countries, with, for example, Germany more successful in reducing carbon emissions than many other countries.

In the near-medium term the implementation of current Europe-wide policies (the Climate Change package, the Large Combustion Plant Directive and the Industrial Emissions Directive), the current commodity price forward curves and the known changes to the capacity mix are all reflected in the Redpoint Reference scenario."

Risks and sensitivity analysis

4.13. RedPoint has undertaken a number of sensitivities on the Reference scenario to demonstrate the impact on the generation, wholesale price and interconnector dispatch results of key uncertainties on ElecLink's revenues. In particular, RedPoint presented the results for the following sensitivities:

- Lower gas prices, examining how a lower long term gas price assumption would impact prices and ElecLink revenues;
- Different capacity mix in France and GB, driven by changes to existing policies;
- No Carbon price support in GB, and its impact on GB prices;
- High interconnection, examining the impact of more interconnection being built; and
- Forced outages on ElecLink, the impact of various assumed forced outage rates on the revenues of ElecLink.

4.14. Using RedPoint revenue projections and assuming only 20% of capacity is sold on a short term basis, ElecLink estimates the impact of those sensitivities on the project's internal rate of return:

- Lower gas price: -0.2%;
- Different capacity mix in France and GB: -1.7%;
- No carbon price support in Great Britain: -1.2%;
- Higher level interconnection: -0.4%.

4.15. In addition to risks related to capacities to be sold on a short term basis, ElecLink estimates that main risk drivers are construction costs, project commissioning and unplanned interruptions. It estimates the impact of those sensitivities on the project's internal rate of return of the following scenarios:

- 10% increase in construction costs;
- One year delay in commissioning;
- Increase in unplanned interruption.

4.16. ElecLink also points to risks related to its specificities as a non-regulated entity and a special purpose vehicle. Those are:

- No recourse to stable regulated revenues;
- The necessity of selling capacity on long term contracts, since "Lenders give no value to uncontracted capacity in their cash-flow analysis";
  Project debt lenders requiring ElecLink customers to have a high credit quality. This limits ElecLink's range of potential customers and gives customers with a high credit-rating significant bargaining power.

Other elements of risk assessment

4.17. In its "Economic evidence and analysis", ElecLink estimates the optimal incremental interconnection capacity (after IFA 1, IFA 2, and taking into account BritNed and NEMO) between France and GB to be around 5000 MW[45]. As a result of security issues on the Channel Tunnel, ElecLink's capacity cannot exceed 1000 MW. At this incremental capacity level, the study estimates a net present value of revenues per MW which is significantly higher than projected revenues for ElecLink.

[45] In the ten year development plan, RTE displays four scenarios in 2030 for the analysis of the long term needs of the development of the network. In these scenarios, the level of interconnections between France and UK evolves between 4 GW and 6 GW.

Exemption scope

4.18. In a working document[46] the EC explains that "Exemptions are an exception to the general rule of regulated TPA. Such exceptions have to be limited to what is strictly necessary to realize the investment and the scope of the exemptions has to be proportionate. […] [An] example for a partial exemption is to exempt the project from only parts of the tariff related rules, e.g. by granting a higher rate of return."

4.19. CRE specifies in its' communication of 29 March 2012[47], that *"In some cases CRE may, for example, grant a partial exemption from paragraph 6 of Article 16 of Regulation 714/2009 by imposing on the project manager the sharing of the revenue and/or profits earned from the operation of the interconnector".*

4.20. It should be noted that for several infrastructures exemption decisions[48], the EC have limited revenues and/or profits of the investor have been limited in the exemption.

4.21. The NRAs intend to examine the appropriateness of the exemption requested by ElecLink and, if appropriate, consider potential remedial measures to ensure that the exemption is appropriate and proportionate.

4.22. For the time being, the NRAs have not decided on the opportunity or necessity of imposing such measures. However, if parts of ElecLink's revenues/benefits were to be shared with grid users, the following criteria could be considered for the sharing mechanism:

i) Allow for realising the investment:
- Not threaten the feasibility of the project by reducing its expected return below a reasonable rate
- Take into account the risk profile of the project
- Prevent peak shaving (leave ElecLink the opportunity to offset periods of low income with periods of higher incomes) while allowing regular payments to grid users
- Be tailored to ElecLink's business model based on ~80% long term contracts sales. (if allowed by the exemption)
- Be verifiable and opposable by ElecLink

ii) Protect grid users:
- Not provide counter-incentives to efficient operation of the interconnector capacity
- Ensure availability of the amounts due to network users (prevent credit risk)
- Be based on auditable information that cannot be manipulated by ElecLink

[46] Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity:
http://ec.europa.eu/energy/infrastructure/infrastructure/gas/doc/sec_2009-642.pdf

[47] Communication of the French Energy Regulatory Commission of 29 March 2012 on the application of Article 17 of Regulation (EC) No 714/2009 of 13 July 2009:
http://www.cre.fr/en/documents/deliberations/communication/interconnections

[48] Such as BritNed in 2007, Arnoldstein-Tarvisio in 2011 and Trans-Adriatic Pipeline in 2013.
http://ec.europa.eu/energy/infrastructure/exemptions/doc/exemption_decisions.pdf

Question 26: What is your assessment of the hypotheses taken by ElecLink in its exemption request? For instance, are the congestion rent provisions and optimal interconnection capacity appropriate?

Question 27: Do you consider the scope of the exemption, as requested by ElecLink, is necessary to realise the investment?
If not, which of the following would you consider to be the most appropriate and effective means to reduce the exemption in order for it to be proportionate to the risks born by ElecLink?

- reduction of the scope of the exemption on Third Party Access
- reduction of the scope of the exemption on use of revenues?
- reduction of the scope of the exemption on ownership unbundling
- other (please explain)

Question 28: Do you think it would be appropriate to impose a revenue sharing mechanism? If so, does the criteria for a possible revenue sharing mechanism listed in paragraph 4.22 seem relevant to you? Are there any other criteria that you consider would be important?

Question 29: In the reference scenario, ElecLink estimates the project's Internal Rate of Return (IRR) at a level that appears to be significantly higher than allowed regulated returns. Taking into account the project's and ElecLink's specificities, what are your views on the reasonable rate of return for such a project?

5. General questions and other relevant exemption conditions

Chapter Summary: Asks some general questions on the exemption, its duration and scope, as well as summarising ElecLink's views as to how it considers its exemption request meets the conditions that require:
- the interconnector owner to be separate (at least in legal form) from the system operators in GB and France;
- that charges will be levied on users of the interconnector; and
- that no part of the capital or operating costs have been recovered from charges made for the use of transmission or distribution systems in GB or France.

General questions

5.1. This section seeks views on means for ensuring the scope and duration of any exemption is appropriate and proportionate.

5.2. ElecLink has requested an exemption for 25 years, starting from commencement of operations in 2016.

5.3. The NRAs may impose conditions concerning the duration of the exemption and third party access.

5.4. Other conditions may be imposed by the NRAs in order to ensure fulfilment of the exemption conditions (a)-(f) during all the exemption period.

To sum up your previous answers:

Question 30: In your overall assessment, do you consider ElecLink has met all of the exemption conditions and so should be granted an exemption?

If so,

Question 31: Should an exemption be given for the duration requested by ElecLink (25 years), or should it be shortened (If so, by how much)?

Question 32: Should this exemption cover all of the provisions for which ElecLink has sought exemption, or should it be an exemption from only some of/parts of the concerned provisions? For this question, you may refer, in particular, to question 27

Question 33: Do you have any other remarks on ElecLink's exemption request?

Other conditions

5.5. In addition to the exemption conditions relating to impact on competition discussed above, the Regulation also requires the following conditions to be met:

Condition (c) The interconnector must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that interconnector will be built.

5.6. In its exemption request ElecLink confirms that it is owned by Star Capital (51%) and Groupe Eurotunnel (49%) and that at 30 June 2013, neither shareholder is related to the System Operators in GB or France.

5.7. From the representations made by ElecLink on this matter it appears clear that ElecLink is a separate legal entity that is independent from the SOs in both GB and France. On the basis of these representations, the NRAs' initial view is that this condition is met.

Condition (d) Charges are levied on users of that interconnector.

5.8. ElecLink confirms in its exemption request that its costs will need to be recovered through the sale and use of its capacity. This means that none of ElecLink's costs will be underwritten through regulated transmission charges.

5.9. The NRAs consider ElecLink to have provided adequate information to show that charges will be levied on users of the interconnector. Therefore, the NRAs' initial view is that this condition is met.

Condition (e) Since the partial market opening referred to in Article 19 of Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector.

5.10. In its exemption request ElecLink confirms that its proposed ElecLink interconnector is a 'new' interconnector and that no part of the costs of the project has yet been recovered.

5.11. The NRAs note that since this is a new (proposed) investment, no part of the capital costs invested will have been recovered from any component of charges made for the use of the transmission or distribution systems linked by the interconnector. Accordingly, the NRAs' initial view is that this condition is met.

Question 34: In your opinion, is there any reason to consider that conditions (c), (d) and (e) are not fulfilled? If so, which condition(s) and why?

6. Consultation Response and Questions

6.1. The NRAs would like to hear the views of interested parties in relation to any of the issues set out in this document. We would especially welcome responses to the specific questions which we have set out in the appropriate sections of each chapter and which are replicated below.

6.2. Responses should be received by 3 January 2014 and should be sent to either:

Ofgem
Email Ikbal.hussain@ofgem.gov.uk
Ikbal Hussain
Manager, European transmission policy
Ofgem
9 Mllbank
London
SWIP 3GE
UK

CRE
Email: dare.cp3@cre.fr
Guro Grøtterud
Commission de Régulation de l'Energie
Direction de l'Accès aux Réseaux Electriques
15, rue Pasquier
F-7537 PARIS Cedex 08
France

6.3. It would be helpful if responses could be submitted by email wherever possible. Written responses may of course be scanned and submitted by email or alternatively by post. Respondents are asked to put any confidential material in the appendices to their responses.

6.4. Respondents may request that their response is kept confidential. Respondents who wish to have their responses remain confidential should clearly mark the document/s to that effect.

6.5. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

6.6. Unless marked confidential, all responses will be published by the NRAs on their respective websites at www.ofgem.gov.uk and www.cre.fr.

6.7. Next steps: Having considered the responses to this consultation, Ofgem and CRE intend to publish a final decision on whether ElecLink should be granted an exemption by 17 March 2014. Any questions on this document should, in the first instance, be directed to:

Ofgem

Ikbal Hussain
Ikbal.hussain@ofgem.gov.uk

CRE

Guro Grøtterud
dare.cp3@cre.fr

6.8. For ease of reference, the specific questions asked in the appropriate sections of each chapter are replicated below.

Chapter 3: Impact on competition, the effective functioning of the internal market and on the efficient functioning of the regulated system

Part 1: Impact on competition and the internal market

Question 1: Do you consider ElecLink's proposed investment enhances competition in electricity supply and therefore meets condition (a)?

Question 2: Do you consider the exemption requested by ElecLink would not be to the detriment of competition and that it therefore meets test 1 of condition (f)?

Question 3: Do you consider the exemption requested by ElecLink would not be to the detriment of the effective functioning of the internal market in electricity and that it therefore meets test 2 of condition (f)?

Question 4: Do you consider ElecLink has provided sufficient information on demand for its interconnector capacity between France and GB?

Third Party Access

Question 5: Do you consider such long-term products would be necessary to raise financing for the project?

Question 6: Analysis conducted by London Economics shows that the price of capacity for long-term contracts may be significantly higher than those assessed by ElecLink. Do you think any limit of capacity sold on multi-year products should be based on the actually contracted revenues or on a maximum volume or on any other basis?

Question 7: Would you be interested in having capacity reserved for shorter-term timeframes (either yearly, monthly, or day-ahead) and allocated through regulated rules based on the European target model for electricity?

Question 8: Would you be interested in multi-year products allocated through an Open Season? If so please provide detail if possible on how much, for which duration, contacts initiated with ElecLink, on which price basis per MWh? Answers to this question would be considered as confidential.

Question 9: In your view, how should the capacity be allocated:

a) the Open Season (one long-term allocation before the interconnector becomes operational); or b) periodical allocations of standard long-term products as defined by the European target model for electricity)?

What should in your view be the split of the foreseen capacity between these two mechanisms?

Question 10: What would in your view be the most appropriate split of capacity (please answer in MW among the following: day-ahead, monthly, yearly, less than 5 years products, 5 to 20 years products).

Question 11: Do you think it appropriate to consider different types of products (PTRs or FTRs) for the same delivery hour?

Question 12: Do you consider it appropriate for there to be a lower degree of firmness for multi-year products?

Question 13: Do you consider it important (especially, but not only, for the secondary market), that the firmness of multi-year products would improve when coming closer to delivery time?[49]

Question 14: In your view, would such provisions allow for a sufficient level of competition?

Question 15: In your view, what criteria should be looked at to authorise a market player to participate in the Open Season?

Questions 16: What information should be publicly available concerning the selection criteria and results of the Open Season (name of the holder of the long-term capacity, amount, and price paid for it)? Would publication of aggregated information be appropriate?

Question 17: Do you consider it important that remaining capacity after intraday allocation could be used for balancing exchanges? If so, how could this be managed most efficiently?[50]

Ownership unbundling

ElecLink considers that an exemption from the unbundling obligations in Article 9 is necessary to allow STAR Capital to retain the flexibility to invest in future energy projects.

Question 18: Do you consider that such exemption is necessary? Please take into account the two Commission staff working papers on how the rules on OU are to be applied, and where applicable, the GB relevant supplier test.

Question 19: If you consider an exemption from Article 9 to be appropriate, should such an exemption be:

(a) granted in full with no conditions imposed by the NRAs?

(b) granted subject to additional conditions imposed by the NRAs?

Question 20: Should an exemption subject to addtional conditions be deemed appropriate what conditions do you consider it would be appropriate for the NRAs to impose?

In the case of a such an exemption, the NRAs may, if they deem it appropraite, include relevant provisions from, or similar to, those contained in the two main separation models described in the Directive, which constitute alternatives to the main unbundling regime:

- *the Independent Transmission Operator, set out in Chapter V of the Directive; and*
- *the Transmission Owner / Independent System Operator, set out in Articles 13 and 14 of the Directive.*

Question 21: Do you consider inclusion of such provisions necessary to ensure the exemption is not detrimental to the effiicient functioining of the internal market?

[49] For instance a 10 year product allocated in 2015 could have, after the yearly allocation for 2018, a firmness concerning the 2018 deliveries upgraded to the yearly products firmness

[50] For example, one option could be for remaining capacity to be managed directly by the two TSOs, with ElecLink being only a cross-border capacity provider.

Question 22: Do you consider inclusion of such provisions would be enough to ensure the exemption is not detrimental to the effiecient functioining of the internal market?

Question 23: Do you consider inclusion of any such provisions may be harmful for ElecLink's interconnector project?

Part 2: Impact of exemption on the regulated system

Question 24: Do you consider the exemption requested by ElecLink would not be to the detriment of the efficient functioning of the regulated systems to which the interconnector is connected and that it therefore meets test 3 of condition (f)?

Chapter 4: Level of risk attached to investment

Question 25: Taking into consideration existing and planned regulated interconnectors between France and GB, do you consider that the risk attached to ElecLink's project is such that the investment would not take place unless an exemption is granted and that it therefore meets condition (b) of Article 17?

Question 26: What is your assessment of the hypotheses taken by ElecLink in its exemption request? For instance, are the congestion rent provisions and optimal interconnection capacity appropriate?

Question 27: Do you consider the scope of the exemption, as requested by ElecLink, is necessary to realise the investment?
If not, which of the following would you consider to be the most appropriate and effective means to reduce the exemption in order for it to be proportionate to the risks born by ElecLink?

- reduction of the scope of the exemption on Third Party Access
- reduction of the scope of the exemption on use of revenues?
- reduction of the scope of the exemption on ownership unbundling
- other (please explain)

Question 28: Do you think it would be appropriate to impose a revenue sharing mechanism? If so, does the criteria for a possible revenue sharing mechanism listed in paragraph 4.22 seem relevant to you? Are there any other criteria that you consider would be important?

Question 29: In the reference scenario, ElecLink estimates the project's Internal Rate of Return (IRR) at a level that appears to be significantly higher than allowed regulated returns. Taking into account the project's and ElecLink's specificities, what are your views on the reasonable rate of return for such a project?

Chapter 5: General questions and other relevant exemption conditions

Question 30: In your overall assessment, do you consider ElecLink has met all of the exemption conditions and so should be granted an exemption?

If so,

Question 31: Should an exemption be given for the duration requested by ElecLink (25 years), or should it be shortened (If so, by how much)?

Question 32: Should this exemption cover all of the provisions for which ElecLink has sought exemption, or should it be an exemption from only some of/parts of the concerned provisions? For this question, you may refer, in particular, to question 27

Question 33: Do you have any other remarks on ElecLink's exemption request?

Question 34: In your opinion, is there any reason to consider that conditions (c), (d) and (e) are not fulfilled? If so, which condition(s) and why?

Appendices

Index

Appendix 1: ElecLink's Exemption request

This appendix contains ElecLink's main exemption submission document. It should be noted that ElecLink also provided the following supporting documents on a confidential basis which, given their confidential nature, have not been published as part of this joint consultation:

- Exhibit A Technical study;
- Exhibit B Consents and licences;
- Exhibit C Market scenarios and revenue study (Redpoint Energy);
- Exhibit D Economic analysis and evidence (Redpoint Energy);
- Exhibit E Project financial information;
- Exhibit F References and supporting data;
- Exhibit G Capacity Allocation and Congestion Management, and
- Exhibit H Impact of ElecLink, a new 1000 MW DC link between France and Great Britain, on the continental European transmission system (Consentec);
- Connexion agreements with Réseau de Transport d'Electricité and National Grid, the French and British national TSOs.

The following error in the application document should be noted: the consequence of the most negative scenario, different mix, is a loss of 43% of total *net* revenue and not of total revenue (without multi-year contracts)

A copy of ElecLink's exemption request can be found on CRE's website at: http://www.cre.fr/en/documents/public-consultations/request-from-eleclink-for-an-exemption-under-article-17-of-regulation-ec-714-2009-for-a-gb-france-interconnector

Appendix 2: Summary report by London Economics

A copy of the summary report by London Economics can be found on CRE's website at: http://www.cre.fr/en/documents/public-consultations/request-from-eleclink-for-an-exemption-under-article-17-of-regulation-ec-714-2009-for-a-gb-france-interconnector

Appendix 3: Impact of ElecLink on French Transmission Grid

CRE has analysed RTE's evaluation of the impacts of the connection of ElecLink to the French regulated network, in terms of reinforcement costs and residual congestion costs. RTE assessed the additional constraints caused by the connection of the new interconnector, resulting from power flows, voltage, stability constraints and short-circuit current calculations.

This study is based on assumptions which are consistent with the "Bilan Prévisonnel", and includes the most recent development targets for RES capacity, derived from the regional network development plan for RES ("S3REnR").

In accordance with CRE's recommendations, this study is also consistent with the French ten year network development plan and thus includes relevant network reinforcement projects over this time frame.

A copy of the RTE study can be found on CRE's website at:
http://www.cre.fr/en/documents/public-consultations/request-from-eleclink-for-an-exemption-under-article-17-of-regulation-ec-714-2009-for-a-gb-france-interconnector

Appendix 4: GB specific context

This section sets out GB specific context and relevant background.

Certification and ownership unbundling

Relevant producer or supplier test – GB context

Ofgem notes ElecLink's comments concerning the likely size and nature of any investments its shareholder may make. Ofgem further notes that the 'relevant producer or supplier' test in GB (described below) inherently allows for some de-minimis investments in small scale generation to be made without breaching the ownership unbundling requirements under the Electricity Act 1989 ("the Act").

It should be noted that under the Act, the generation and supply of electricity in GB are both prohibited activities that may only be carried out under a licence unless a class or individual exemption applies. The Act allows the Secretary of State to make orders giving exemptions from the need to hold licences. Such exemptions can apply to individual cases or can be on the basis of a class (type) of activity. When granted exemptions can be unconditional or subject to certain conditions including length of time.

The Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 ("the Order") sets out the scope of the class exemptions. For example, the Order provides for an exemption from the requirement to hold a generation licence for small generators who do not at any time generate more 50MW from any one generating station[51].

In GB the grounds for certification and the ownership unbundling requirements set out in the Directive have been transposed through national regulations[52], which insert new sections (10A to 10O) into the Act.

Current and future transmission and interconnector licensees are required to apply to the Authority for certification under the ownership unbundling requirements as transposed into GB law. Accordingly, ElecLink as the holder of an electricity interconnector licence will need to apply to the Authority to be certified pursuant to these requirements.

Section 10E of the Act sets out the grounds on which the Authority may decide to certify an applicant. The first of these grounds is that the Authority may decide to certify an applicant if that applicant meets the ownership unbundling requirement in section 10F of the Act.

Section 10F of the Act provides that the ownership unbundling requirement is met if the Authority thinks that each of the five tests set out in section 10F is passed.

The first of these tests is that an applicant for certification holds a majority shareholding in, or otherwise controls a 'relevant producer or supplier' and has undertaken not to exercise shareholder rights in a relevant producer or supplier. Consequently, passive minority shareholding rights in producers/suppliers, where there is no control may be possible without contravening the Act.

[51] Schedule 2 of the Order.
[52] The Electricity and Gas (Internal Markets) Regulations 2011.

Further, investments in entities that do not constitute a relevant producer or supplier may also be possible.

The fourth and fifth of these tests are that a TSO is not controlled by a party that also has a majority shareholding in, or otherwise controls, a relevant producer or supplier. Consequently, the entities that control a TSO could potentially hold passive minority interests, or interests in entities that do not constitute a relevant producer or supplier.

Section 10O of the Act specifies the criteria to be applied when determining whether an undertaking 'performing any of the functions of generation or supply' as referred to in Article 9 of the Directive constitutes a 'relevant producer or supplier'[53]. Amongst other things, the 'relevant' test includes considering:

- whether any such underaking holds, or would require a licence under section 6 of the Act or section 7A of the Gas Act 1986 to carry out their activity in GB, and

- the scope for discrimination between the between the undertaking and the person appying to be certified.

  In this context, Ofgem notes that some investment in small scale generation may still be permissible without an Article 9 exemption provided there is no scope for discrimination.

[53] Subsections (4) and (5) of Section 10O of the Act.

Requirements of Article 12 of the Directive as transposed in GB legislation

Article 12 of the Directive		Interconnector Compliance in GB as applicable to ElecLink
12	Each transmission system operator shall be responsible for:	
12(a)	ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity, operating, maintaining and developing under economic conditions secure, reliable and efficient transmission systems with due regard to the environment	SLC 3 of the Electricity Interconnector Licence: *"The licensee shall comply with the requirements of the Grid Code ..."*. NGET is responsible for ensuring that the GB system is able to meet demand. The Grid Code http://www.nationalgrid.com/NR/rdonlyres/67374C36-1635-42E8-A2B8-B7B8B9AF2408/58810/00_GRID_CODE_FULL_I5R2.pdf sets out how users can use the national system. Interconnectors cooperate with the TSO as users of the national system to ensure demand is met. SLC 19 of the Electricity Interconnector Licence: SLC 19(2): *"The licensee shall operate, maintain and develop an economic, efficient, secure and reliable interconnector."* SLC 19(3): *"The licensee shall ensure adequate interconnector capacity and interconnector reliability to ensure the long-term ability of the interconnector to meet reasonable demands for capacity and contribute to security of supply."*
12(b)	ensuring adequate means to meet service obligations;	SLC 19(1)(a) and (b) of the Electricity Interconnector Licence (Operation and development of the interconnector): *"1. The licensee shall at all times act in a manner calculated to secure that it has available to it such resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licenses, consents and facilities, on such terms and with all such rights, as shall ensure that it is at all times able:* (a) *to properly and efficiently participate in the operation of the interconnector; and* (b) *to comply in all respects with its obligations under this licence, the Act, the Regulation and any other legislation as the Authority may direct from time to time for the purposes of this licence condition."*
12(c)	contributing to security of supply through adequate transmission capacity and system reliability;	In addition to SLC 19 of the Electricity Interconnector Licence, the National Electricity Transmission System Security and Quality of Supply Standards (SQSS) apply to the National Transmission System. http://www.nationalgrid.com/uk/Electricity/Codes/gbsqsscode/DocLibrary/ The national TSO must ensure that the national system is operated according to the SQSS standards and therefore interconnectors must work with the National TSO to ensure that these standards are upheld both across the national system and the interconnectors.
12(d)	managing electricity flows on the system, taking into account exchanges with other interconnected	SLC 19 of the Electricity Interconnector Licence (Operation and development of the interconnector) as set out above. Further, SLC 19(4) stipulates that: *"The licensee shall manage electricity flows on the licensee's interconnector,*

	systems. To that end, the transmission system operator shall be responsible for ensuring a secure, reliable and efficient electricity system and, in that context, for ensuring the availability of all necessary ancillary services, including those provided by demand response, insofar as such availability is independent from any other transmission system with which its system is interconnected;	*taking into account exchanges with any interconnected system and shall ensure the availability of all ancillary services including those provided by demand response, insofar as such availability is independent from an interconnected system."*
12(e)	providing to the operator of any other system with which its system is interconnected sufficient information to ensure the secure and efficient operation, coordinated development and interoperability of the interconnected system	Condition 5.2(c) of the Electricity Interconnector Licence (Provision of information to a relevant transmission licensee or relevant distribution licensee) provides that: *"... the licensee shall furnish to any relevant transmission licensee, any relevant distribution licensee or any operator of an interconnected system, information concerning the operation and technical specifications of the licensee's interconnector in such manner and at such times as may reasonably:* *...* *(c) be required by the operator of an interconnected system for the purposes of ensuring the secure and efficient operation of the interconnected system and its coordinated development and interoperability with the licensee's interconnector."*
12(f)	Ensuring non-discrimination as between system users or classes of system users, particularly in favour of its related undertakings;	Condition 20 of the Electricity Interconnector Licence (Prohibition of discrimination and cross-subsidies) provides that: *"The licensee shall not discriminate between users or classes of users particularly in favour of a related undertaking of the licensee."*
12(g)	Providing system users with the information they need for efficient access to the system; and	Condition 11A of the Electricity Interconnector Licence (Approval of terms for access to the licensee's interconnector) requires the licensee to submit access rules (including rules on arrangements for users to obtain interconnector capacity) to the Authority for approval. It also contains rules on the publication of the licensee's access rules and provision of the licensee's access rules to any person who requests them. Modification of the access rules is also subject to Authority approval.
12(h)	collecting congestion rents and payments under the inter-transmission system operator compensation mechanism, in compliance with Article 13 of Regulation (EC) No 714/2009, granting and managing third-party access and giving	This does not apply to interconnectors as this is an obligation on the Network System Operator.

	reasoned explanations when it denies such access, which shall be monitored by the national regulatory authorities; in carrying out their tasks under this Article transmission system operators shall primarily facilitate market integration.	

Exemption order under SLC 12 of the interconnector licence (GB only)

In GB, the conditions set out in paragraphs 1(a) to (f) of Article 17 are mirrored in the requirements set out in paragraph 6 of Standard Licence Condition (SLC) 12 of the electricity interconnector licence[54].

The use of revenue requirements in Article 16(6) of the Regulation are mirrored in SLC 9 of the electricity interconnector licence.

The TPA requirements of the Directive are reflected in SLC 10 ("Charging methodology to apply to third party access to the licensee's interconnector") and SLC 11 ("Requirement to offer terms for the access to the licensee's interconnector").

Any decision by the Authority to grant an exemption under Article 17 needs be given effect in the relevant electricity interconnector licence.

SLC 12 (Application of licence conditions 9, 10 and 11: Exemption orders) of the electricity interconnector licence allows for the following conditions to not have effect in the licence:

- Condition 9: Use of Revenues;
- Condition 10: Charging methodology in respect of third party access to the licensee's interconnector; and
- Condition 11: Requirement to offer terms for access to the licensee's interconnector

by the issuing of an exemption order, which would give effect to the exemption.

Accordingly, if a decision is made to grant an exemption under Article 17, ElecLink will need to submit a request to the Authority under its interconnector licence requesting that the corresponding conditions cease to have effect in its interconnector licence.

It should be noted that paragraph 7 of SLC 12 requires a licensee's Access Rules to be approved before an exemption order may be granted. Provisions with respect to the approval of Access Rules are set out in SLC 11A: Approval of terms for access to the licensee's interconnector.

54 The Standard Licence Conditions (SLCs) applicable to an electricity interconnector licence (in Great Britain): https://epr.ofgem.gov.uk//document/Download/28007

Appendix 5 - Feedback Questionnaire (Ofgem only)

Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this joint consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

Please send your comments to:

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