

APPENDIX D – FINAL EXEMPTION DECISION

SCHEDULE A

NRAs Exemption Decision

1.1. Pursuant to Article 17 of the Regulation (EC) no714/2009, the Authority and CRE hereby grant an Exemption to ElecLink (each NRA decision together referred to as the "Exemption Decision") exempting ElecLink from the following provisions to the extent set out below:

(i) Article 16(6) of the Regulation;

ElecLink is partly exempted from Article 16(6) of the Regulation. ElecLink shall comply with the conditions imposed by the NRAs which are set out in part H of this Exemption Decision.

(ii) Article 9 of the Directive;

ElecLink is partly exempted from Article 9 of the Directive. ElecLink shall comply with the conditions imposed by the NRAs which are set out in part I of this Exemption Decision.

(iii) Article 32 of the Directive;

ElecLink is partly exempted from Article 32 of the Directive for multi-year capacity allocated through an Open Season. ElecLink shall comply with the conditions imposed by the NRAs which are set out in part A to G of this Exemption Decision.

1.2. No exemption is given for any other aspects/parts of applicable current and future national and/or European law. In particular:

- No exemption is given from paragraphs 6 and 10 of Article 37 of the Directive. This means, in particular, that allocation rules, (where 'rules' include Access Rules and Charging Methodology/Tariffs), including rules both for an Open Season and non-exempt capacity, are subject to regulatory approval by the NRAs.
- No exemption is given from Article 32 of the Directive for capacity that is not allocated through an Open Season. ElecLink shall comply with all relevant, current and future provisions of national and European legislation in respect of the non-exempt capacity.

Details of conditions imposed

1.3. This Exemption is granted subject to the following conditions:

A) General Conditions

- a) The material provided by ElecLink to the NRAs in respect of this Exemption Decision is complete, correct and not misleading in all material respects;
- b) ElecLink shall notify the NRAs in writing within ten days of the Interconnector commencing commercial operation;
- c) Pursuant to Article 17(8) of the Regulation, the NRAs will amend or withdraw, this Exemption Decision where the NRAs have been requested to by the European Commission.

B) General conditions for capacity allocation (Open Season and non-exempt capacity)

1.4. ElecLink is granted an exemption under Article 32 of the Directive for multi-year capacity allocated through an Open Season.

1.5. This has in particular the following consequences:

1.6. Products with timeframes identical to timeframes which exist on regulated interconnections on the same border have to respect the same provisions as these capacities, particularly in terms of firmness, and will converge at the same path towards the target models.

1.7. ElecLink shall maximize day-ahead and intraday capacity applying UIOSI provisions and Netting.

1.8. ElecLink shall take part in market coupling.

1.9. ElecLink shall make any remaining capacity after the intraday allocation available to the National Electricity Transmission System Operators (NGET and RTE) for balancing purposes. Balancing shall be organized according to the same conditions as for regulated interconnections on this border.

1.10. ElecLink shall bear the costs of operating and managing the interconnector, and particularly those related to allocation steps.

1.11. ElecLink shall ensure the firmness and related costs for of all allocated products.

C) Open Season approval process

1.12. For capacities allocated through an Open Season and pursuant to paragraphs 6 and 10 of Article 37 of the Directive, the NRAs will approve, and may require modification to, ElecLink's Access Rules and Charging Methodology/Tariffs.

1.13. ElecLink shall organise a public consultation on the proposed rules before submitting them for NRA approval.

1.14. The NRAs will assess whether the Open Season rules are compliant with the conditions of this Exemption Decision.

1.15. The approval process of the Open Season rules shall comply with the specific national and European requirements for approval of terms of access to interconnectors both in France and GB.

D) Non-exempt capacity approval process

1.16. For all non-exempt capacity and pursuant to paragraphs 6 and 10 of Article 37 of the Directive, the NRAs will approve, and may require modification to, ElecLink's Access Rules and Charging Methodology/Tariffs.

1.17. The approval process of the Access Rules and Charging Methodology/Tariffs shall comply with relevant national and European requirement for the approval of terms of access to interconnectors both in France and GB.

E) Open Season capacity allocation

1.18. ElecLink shall ensure the Open Season rules include the following:

- a) No products are allocated for more than 20 years, and no contracts shall extend beyond the 20th year after commissioning;
- b) The average contract length does not exceed 15 years¹;
- c) All products allocated through an Open Season for the same delivery period shall the same level of firmness between them;
- d) A range of products of different lengths is offered, including products with duration equal to or shorter than 5 years. The breakdown between products shall be set out as part of Open Season/Access Rules for NRA approval as described in part C;
- e) Eligibility conditions allow smaller player to be eligible at least for smaller and/or shorter capacity products;
- f) The results of the Open Season are made public and include, but are not limited to, the following information:
 - i. Name of the Capacity Holder; and
 - ii. For each contract, products contracted including volume, duration and price.

¹ ElecLink will have to describe precisely the calculation methodology for this average duration in the Open Season Access Rules submitted to NRAs approval.

1.19. Products allocated through an Open Season are similar to the long term products that ElecLink will allocate with the following authorized differences:

- Longer delivery period (up to 20 years); and
- When multi-year products, allocated through an Open Season reach the same timeframe as regulated long-term products for delivery at the same period (e.g. annual products), then they shall comply with the same conditions (including firmness) as these long-term products. Before that period, multi-year products allocated through an Open Season may have a lower degree of firmness, subject to NRA approval.

1.20. The specific characteristics of the multi-year capacity allocated through an Open Season shall be set out for NRA approval in the Open Season rules as set out in part C.

F) Limitation of total multi-year capacity allocated through an Open Season

1.21. Multi-year capacity allocated through an Open Season is limited as follows:

- a) The capacity allocated through multi-year products shall not exceed, at any moment, 80% of the interconnector's capacity (800 MW in each direction)
- b) Over the whole exemption period, the present value of discounted revenues from capacity allocated through multi-year products shall not exceed a maximum amount expressed in M€2016 discounted at the nominal rate of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- c) Profits, as determined in Schedule B – Operating the profit sharing mechanism, shall not be positive the year preceding an Open Season.
- d) The remaining capacity shall not be allocated through an Open Season.

1.22. The mechanism with which ElecLink shall comply is described in full in the Schedule C titled "Operating the limit to total capacity allocated through multi-year products".

G) Limit on multi-year products allocated through an Open Season to any undertaking

1.23. ElecLink shall ensure that for multi-year products allocated through the Open Season, capacity owned by an entity, understood as an undertaking or undertakings that are related, is limited as follows:

- At any time, no entity holds more than 40% of the total capacity of the interconnection (400 MW) in either direction; and

- If an entity holds more than a 40% market share in a relevant geographic market, it shall not hold, at any time, more than 20% of the total capacity of the interconnector (200 MW) in the direction of the import to this market.

1.24. For this purpose:

- Market shares are calculated based on generation interests; and
- Related undertaking has the meaning given in paragraph 22 of Article 2 of the Directive.

1.25. ElecLink shall refuse any exchange in the secondary market and any transfer to a market participant where such exchange or transfer would lead it to exceed the allowed capacity threshold.

1.26. In case of exceeding the market share threshold during the execution of the contract, the concerned entity must return the exceeding capacity on the secondary market. ElecLink shall ensure that the concerned entity respects this obligation.

H) Profit sharing mechanism

1.27. ElecLink must comply with the following profit sharing mechanism:

- If, over the exemption period, the present value of profits, discounted at a nominal rate of [REDACTED], is positive, 50 % of these profits shall be transferred to the regulated National Electricity Transmission System Operators (NETSOs) – NGET and RTE – in accordance with the provisions of Article 16(6) of the Regulation;
- The profit over the exemption period shall be assessed taking into account:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

1.28. The total amount payable by ElecLink to the regulated NETSOs shall be calculated on an annual basis based on the latest available information.

1.29. This mechanism with which ElecLink shall comply is described in full in the Schedule B titled "Operating the profit sharing mechanism".

I) Unbundling conditions

1.30. ElecLink shall be fully certified by CRE in France and by Ofgem in GB, before the start of the operation of the interconnector.

1.31. To this end, ElecLink shall apply for certification under the ownership unbundling model defined by Article 9 of the Electricity Directive, in accordance with national rules

transposing Articles 10 and 11 of the Electricity Directive. ElecLink shall apply for certification to both NRAs at the same time.

1.32. In compliance with paragraph 5 of Article 10 of the Directive and with the national legislation implementing paragraph 5 of Article 10 of the Directive, NRAs of both Member States shall assess ElecLink's compliance with the specific terms and conditions of the ownership unbundling model.

1.33. During this assessment, if both NRAs conclude that ElecLink meets the requirements of Article 9 of the Electricity Directive, then ElecLink will have to comply with the provisions of Article 9 of the Electricity Directive during all the exemption period. In this case and once both NRAs have concluded that ElecLink meets the requirements of Article 9 of the Electricity Directive, they will notify the European Commission of their respective certification decisions. Such decisions shall then be finalised in accordance with Article 10 of the Electricity Directive and Article 3 of the Electricity Regulation, and relevant national implementing legislation.

1.34. If one or both NRAs conclude that ElecLink does not meet the requirements of Article 9 of the Electricity Directive, then ElecLink shall withdraw its applications for certification under this ownership unbundling model from both NRAs. ElecLink shall re-apply for certification under the "amended OU model", which is specified below, within a period of three months from the date that ElecLink has been notified that one or both NRAs have concluded that it does not meet the requirements of Article 9 of the Electricity Directive. ElecLink shall submit a new application for certification to both NRAs at the same time. The certification decisions under the "amended OU model" will then be notified by the NRAs to the European Commission and thereafter finalised in accordance with Article 10 of the Electricity Directive and Article 3 of the Electricity Regulation, and the relevant national implementing legislation.

1.35. The specific terms and conditions of the "amended OU model" are detailed below:

- a) ElecLink is exempt from Article 9 of the Directive to the extent that:
 - i. For the assessment of Article 9, undertakings that are directly or indirectly controlled by Star Capital will not be taken into account, provided that these undertakings are not of a size materially different to the size of typical investments made by Star Capital according to ElecLink's exemption application². As a consequence, Star Capital will be allowed to make investments in generation or supply activities providing this condition is met; and
 - ii. For the assessment of point (b) (i) of paragraph 1 of Article 9, the same person or persons are authorized to "directly or indirectly exercise control over an undertaking performing any of the functions of generation or supply" and to exercise "any right" over ElecLink, so long as "any right" over ElecLink does not constitute direct or indirect control.

² According to the exemption application, ElecLink states that Star Capital "is looking for the opportunity to invest in capital-intensive corporate activity that has an enterprise value in the range of €100 million to €500 million". In addition, ElecLink states that "any investment would be separate from ElecLink and would not result in discrimination in respect of the operation or 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".

- b) Because of the investment opportunities in generation or supply allowed by the above conditions, ElecLink shall also comply either with all conditions set out in chapter V of the Electricity directive (ITO model) with the exception of Article 22 of the Directive or with all conditions set out in Articles 13 and 14 of the Electricity Directive (ISO model) with the exception of point (c) of paragraph 2 of Article 13. This choice between complying with the conditions set out in the ITO Model or alternatively the ISO model is left to ElecLink's discretion. ElecLink shall indicate its choice in its application for certification under the "amended OU model".

1.36. ElecLink shall notify the NRAs of any change to the investment of Star Capital in undertakings performing functions of generation or supply.

1.37. In the event of failure to comply with the obligations arising from its certification under the ownership unbundling model or under the "amended OU model", ElecLink will be subject to penalties in accordance with national legislation in France and GB for such infringements for any transmission system operator.

J) Change of ElecLink's shareholding conditions

1.38. If an undertaking acquires, solely or jointly, direct or indirect control over, or merges with, ElecLink or one of its shareholders, ElecLink shall notify, without delay, this change to each of the NRAs which will then assess (if deemed necessary in cooperation with a national competition authority) whether it constitutes a material change in the circumstances which form the basis on which the exemption has been granted.

1.39. These provisions will be interpreted as within the meaning of Article 3 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation).

1.40. In view of the fact that the European Commission supports cooperation with financial investors to raise the necessary funds for the capital expenditure that is needed to realise the investments in the EU energy network infrastructure, the NRAs consider that if all or part of ElecLink's shares are purchased by an undertaking similar to Star Capital, the conditions provided by the exemption decision to Star Capital could also benefit this new shareholder. The NRAs will take their decision following a case-by-case assessment.

K) Transparency and information obligations

1.41. ElecLink shall respect all transparency requirements set out in the Regulation.

1.42. ElecLink shall provide all information that NRAs require to assess ElecLink's compliance with the conditions imposed in this Exemption Decision.

1.43. In particular, ElecLink shall provide all information that NRAs require to assess capacity and profit sharing calculation as described in Schedules B and C.

1.44. ElecLink shall prepare, in cooperation with the NRAs, a monthly report on the use and management of the interconnector.

1.45. ElecLink shall inform the NRAs in case of a change in the circumstances which form the basis on which it has been determined that the conditions listed in paragraph 1 of the Article 17 of Regulation have been met.

1.46. Information shall be provided to the NRAs on request and as set out in the relevant European or national legislation or the Licence.

1.47. ElecLink shall comply with the above mentioned transparency and information obligations in a timely manner.

L) Penalty in case of infringement of the Exemption Decision

1.48. The NRAs foresee that any infringement by ElecLink of the conditions set out in the exemption decision may result in a penalty imposed by the NRAs on ElecLink that must be proportionate to the seriousness of the infringement, in accordance with relevant national rules or legislation.

M) Amendment or withdrawal of the Exemption Decision

1.49. In case of a material change in the circumstances which form the basis on which it has been determined that the conditions listed in paragraph 1 of the Article 17 of Regulation have been met, the NRAs may amend or revoke this Exemption Decision.

1.50. The NRAs may also revoke this Exemption Decision where:

- a) ElecLink is found to be in breach of one or more conditions laid down in this Exemption Decision;
- b) ElecLink has, in GB, a receiver appointed (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986, as amended from time to time) for the whole or any material part of its assets or undertaking;
- c) ElecLink has entered administration as defined in GB under section 8 of and Schedule B1 to the Insolvency Act 1986, as amended from time to time; and
- d) ElecLink is incorporated or has assets in a jurisdiction outside England and Wales or France and anything analogous to any of the events specified in subparagraphs (c) and (d) above occurs in relation to ElecLink under the law of any such jurisdiction.

1.51. In the cases covered in paragraphs 1.49 and 1.50 of Schedule A, the NRAs will give a notice of withdrawal to ElecLink not less than four months before the coming into force of the withdrawal.

N) Date of entry into force of the Exemption Decision

1.52. The Exemption Decision shall come into force upon publication in the Official Journal of the French Republic³ and in GB when the Exemption Order under Condition 12 of ElecLink's interconnector licence has been issued by the Authority.

O) Expiry of the Exemption Decision

1.53. This Exemption Decision shall expire when the European Commission decision on the exemption⁴ shall expire, that is :

- a) two years after the date the European Commission adopted its decision in the event that construction of the Interconnector has not started by that date; or
- b) five years after the date the European Commission adopted its decision in the event that the Interconnector has not become operational by that date.

1.54. Nevertheless, the Exemption Decision shall continue to be in force where the European Commission decides, pursuant to subparagraph 5 of paragraph 8 of Article 17 that any delay is due to major obstacles beyond the control of ElecLink.

P) Duration of the Exemption

1.55. Subject to the conditions set out in this Exemption Decision, the exemption is granted for a period of twenty-five years from the date that the Interconnector commences commercial operation.

³ Journal officiel de la république française

⁴ Commission Decision of 28.7.2014 on the exemption of ElecLink Limited under Article 17 of Regulation (EC) No 714/2009 for an electricity interconnector between France and Great Britain, No C(2014) 5475 final.

1.56. In this decision

the "Access Rules"	means the document setting out the conditions of access to ElecLink's capacity. The document includes the Access Rules for the Open Season and Access Rules for shorter term timeframes;
the "Act"	means the Electricity Act 1989 of GB legislation, as amended from time to time;
the "Authority"	means the British National Regulatory Authority (NRA): the Gas and Electricity Markets Authority established by section 1(1) of the Utilities Act 2000, as amended from time to time;
The "Article 17"	means article 17 of Regulation (EC) no714/2009;
the "CRE"	means the French National Regulatory Authority (NRA): the Commission de régulation de l'énergie ;
the "Capacity Holder"	means the person or persons to whom the Primary Capacity in the Interconnector has been awarded;
"Commences Commercial Operation"	means the time when the Interconnector has been commissioned and is available for physical flow of electricity on the market;
"costs"	includes, for the avoidance of doubt, all investment and development costs in relation to the Interconnector prior to, on and after the date on which the Interconnector commences commercial operation;
the "Directive"	means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity;
"ElecLink"	means ElecLink Limited (registered in England and Wales under company number 07595420) whose registered office is situated at 6th Floor, 33 Cavendish Square, London, W1G 0PW, Great Britain a company authorised by licence in Great Britain to participate in the operation of the Interconnector;
"Exempted capacities"	Capacities allocated through the Open Season process;
"Exemption"	means an exemption under Article 17(1) of the Regulation;
"Exemption Order"	means an order issued by the Authority in accordance with standard licence condition 12 of the licence;
the "Interconnector"	means the projected high voltage DC electricity interconnector, whose owner is ElecLink, between the Sellindge substation in Great Britain and the Les Mandarins substation in France, with a capacity of 1000

	MW;
the "Joint Opinion"	means the document setting out the opinion of the French and British NRAs on ElecLink's request for an exemption under Article 17 of Regulation no714/2009;
the "Licence"	means the Licence granted to ElecLink by the Authority under section 6(1(e) of the Act on 19 November 2013, such licence authorising ElecLink to participate in the operation of the Interconnector;
"Netting"	Rule to maximize the capacity given to the market at all relevant timeframes (day ahead and intraday) in a given direction, by taking into account the nominations made at previous timeframes in the opposite direction;
the "NRAs"	means the National Regulatory Authorities (the Authority and the CRE);
"Ofgem"	means the Office of Gas and Electricity Markets;
"Open Season"	means the capacity allocation process proposed by ElecLink to offer the Interconnector multi-year products to the market;
the "Regulation"	means Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity.