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C(2019) 8845 final

**COMMISSION OPINION**

**of 5.12.2019**

**pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Articles 10(6) and 11(6) of  
Directive 2009/72/EC – United Kingdom - Certification of Diamond Transmission  
Partners Walney Extension Limited**

(ONLY THE ENGLISH VERSION IS AUTHENTIC)

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### **I. PROCEDURE**

On 9 October 2019, the Commission received a notification from the national regulatory authority in the United Kingdom (UK) responsible for Great Britain (GB), the Office of Gas and Electricity Markets (hereafter “Ofgem”), of a preliminary decision concerning the certification of Diamond Transmission Partners Walney Extension Limited (hereafter “Walney Extension OFTO”) as transmission system operator for electricity (hereafter “TSO”).

Pursuant to Article 3 of Regulation (EC) No 714/2009<sup>1</sup> (hereafter "Electricity Regulation") and Articles 10 and 11 of Directive 2009/72/EC<sup>2</sup> (hereafter "Electricity Directive"), the Commission is required to examine the notified draft decision and to deliver an opinion within two months to the relevant national regulatory authority as to its compatibility with Articles 9, 10(2) and 11(7) of Directive 2009/72/EC.

### **II. DESCRIPTION OF THE NOTIFIED DRAFT DECISION**

Walney Extension OFTO is a special purpose vehicle established to own and operate the Walney Extension offshore transmission system which will connect the Walney Extension Offshore Wind Farm (with an installed capacity of 659 MW located 19 km from the coast of Cumbria in GB) with the onshore network at the connection point at Heysham (Lancashire, GB). Walney Extension OFTO would be a licensed offshore transmission system owner (hereafter “OFTO”) under the specific national regime for such projects (hereafter “OFTO Regime”). Neither the Walney Extension Offshore Wind Farm<sup>3</sup> nor the nearby Walney 1, Walney 2, Barrow, Ormonde and West of Duddon Sands offshore wind farms<sup>4</sup> nor the onshore transmission system are owned or operated by Walney Extension OFTO.

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<sup>1</sup> 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 and repealing Regulation (EC) No 1228/2003, OJ L 211/15 of 14.8.2009.

<sup>2</sup> 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 and repealing Directive 2003/54/EC, OJ L 211/55 of 14.8.2009.

<sup>3</sup> The Walney Extension offshore wind farm is being developed by Ørsted (formerly Dong Energy) together with minority partners PFA and PKA, two Danish pension funds (<https://walneyextension.co.uk/About-the-project#0>, <https://www.pka.dk/om-pka/this-is-pka/>, [https://english.pfa.dk/about-pfa/pfa-overview/pfa-in-brief/?icid=hero\\_pfainbrief\\_readmore](https://english.pfa.dk/about-pfa/pfa-overview/pfa-in-brief/?icid=hero_pfainbrief_readmore)).

<sup>4</sup> According to OFGEM’s draft certification decision, the Walney 1 and 2 offshore wind farms are owned by Dong (now Ørsted), PGGM and (Dutch) Ampère Equity Fund; the Barrow offshore wind farm is

Ofgem has analysed whether Walney Extension OFTO complies with the requirements of the ownership unbundling model, as laid down in the UK legislation transposing the Electricity Directive. In its preliminary decision, Ofgem concludes that Walney Extension OFTO complies with these requirements.

Walney Extension OFTO is a 100% subsidiary of Diamond Transmission Partners Walney Extension (Holdings) Limited (hereafter “HoldCo”). Ofgem identifies Mitsubishi Corporation (hereafter “MC”), Chubu Electric Power Co. (hereafter “Chubu”), HICL Infrastructure Company PLC (hereafter “HICL”) and InfraRed Capital Partners (Management) LLP (hereafter “InfraRed”) as ultimate controllers of Walney Extension OFTO.

51% of the shares of HoldCo are held by Diamond Transmission Corporation Limited (hereafter “DTC”) which is a 100% subsidiary of MC, a global integrated business enterprise. The purpose of DTC is to act as holding company for offshore transmission investments of MC in Europe, including, next to Walney Extension OFTO, the four Blue Transmission OFTOs which were the subject of Commission opinion C(2016)27 final, Diamond Transmission Partners BBE Limited (see Commission opinion C(2018) 2266 final of 12 April 2018), RB OFTO (see Commission opinion C(2019) 699 final of 24 January 2019) and Galloper OFTO (see Commission opinion C(2019) 5994 final of 7 August 2019).

20% of HoldCo’s shares are indirectly held by Chubu via its 100% subsidiary Chubu NewCo SPV (CNS). The other 29% of HoldCo's shares are indirectly held by HICL, a long-term equity investor in infrastructure registered in England and Wales, through a series of 100% subsidiaries including Infrastructure Investments Ltd Partnership. Infrastructure Investments Ltd Partnership is indirectly controlled by InfraRed because of an Operator Agreement, ultimately giving Infrastructure Investments General Partner Ltd, a subsidiary of InfraRed, responsibility for the control and management of Infrastructure Investments Ltd Partnership.

In relation to electricity generation or supply participations of the ultimate controllers of Walney Extension OFTO, Ofgem notes that MC, Chubu and InfraRed have controlling interests over "relevant producers or suppliers" as defined in UK law, whereas HICL does not have any interests in or control over "relevant producers or suppliers".

According to the draft certification decision by Ofgem, MC and InfraRed hold the following participations in the EEA which qualify as "relevant producers or suppliers" under UK legislation. The Commission notes that Ofgem does not consider that Walney Extension OFTO controls that interest in case of a minority shareholding. However, in accordance with Article 9(1) and (2) Electricity Directive, persons which exercise control over transmission system operators may not have “any rights” in production or supply undertakings. “Any rights” in minority shareholdings can also be exercised via voting rights or appointing powers.

#### *Participations of MC*

- The Luchterduinen Offshore Wind Farm Project (‘Luchterduinen Project’): MC has a 50% share in this 129MW wind farm, located off the coast of The Netherlands.
- A 48 MW battery energy storage system project in Germany (‘BESS Project’): MC has a 50% equity interest in the BESS Project. The BESS Project connects to the TenneT transmission system in Germany.

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owned by Centrica and Dong (now Ørsted), the Ormonde offshore wind farm by Vattenfall and the West of Duddon Sands offshore wind farm by Dong (now Ørsted) and Scottish Power.

- OVO Energy, an energy supplier<sup>5</sup>: MC has a 20% minority interest.
- The Norther Offshore Wind Farm Project (hereafter “Norther Project”): MC has a 25% share in this 379 MW offshore wind farm, located off the coast of Belgium, and may exercise indirect control via voting and veto rights.
- ElectroRoute Holdings Limited (‘ElectroRoute’): MC holds a 57.7% share in this Irish energy trading company that trades in electricity markets located in the EEA, including GB markets, and which owns a total of 600 MW electricity generation capacity using gas and diesel.

Additionally, Ofgem’s draft certification lists effective shareholdings of MC in several onshore renewable electricity production installations in the EEA, which, in the meaning of UK unbundling legislation, are not “relevant producers or suppliers”: Next to installations with an installed generation capacity of 1 MW in Spain and 35 MW in Portugal, MC has an interest in 7 projects in France with an installed generation capacity of in total 161 MW.

*Participations of Chubu (via JERA Co. a 50:50 joint venture with TEPCO Fuel & Power)*

- The Gunfleet Sands and Gunfleet Sands II offshore wind farm: Chubu has a 25% interest in this 172.8 MW wind farm of the coast of South East England.
- Zenobe: Chubu has a 10.19% interest in nine battery storage sites in GB with a total capacity of 79 MW.

*Participations of InfraRed*

- Crystal Rigg II Limited (‘Crystal Rigg II’): InfraRed has a 49% share in this 67MW onshore wind farm located in the east of Scotland.
- Statera Energy Ltd (‘Statera Project’): InfraRed has 70% share in this project, which is proposing to fund the roll-out of a pipeline of three 50 MW flexible gas and one 50 MW battery storage projects in UK.
- Sheringham Shoal Offshore wind farm: Infrared has indirect control of this 317 MW offshore wind farm located off the coast of Norfolk, East Anglia.
- Green Frog Power Limited and GFPII Limited (‘Green Frog’): InfraRed holds a 51% equity interest in Green Frog. Green Frog provides balancing services in the GB electricity market. It owns 12 diesel and 14 gas-fired generation sites located throughout UK with a total capacity of 575 MW. It also has a power trading business, providing a route to market for its generation assets.
- Merkur Offshore Wind Farm: Infrared has a 25% interest in this 396 MW offshore wind farm located in Germany which is partially completed. InfraRed may exercise indirect control over this wind farm as a result of voting and veto rights.
- Pallas windfarm Ltd (‘Clahane’): Infrared has a 100% interest in this 55 MW onshore wind farm, located in the Republic of Ireland.
- Pallas Energy Supply Limited (‘Pallas’): Infrared controls this electricity supplier in the Republic of Ireland which buys the output from ‘Clahane’ (see above) and sells it on the Irish wholesale market (SEM pool).

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<sup>5</sup> <https://www.ovo.com/our-business/>

- Jdraas Vindkraft AB (‘Jdraas’): InfraRed has a 100% interest in this 212.9 MW onshore wind farm in Sweden.
- Erstrask Vind AB (‘Erstrask’): InfraRed as a 75% interest in this 229.1 MW onshore wind farm in Sweden which is partially operational and expected to be fully operational in the first quarter of 2020.

Additionally, Ofgem’s draft certification lists effective shareholdings of InfraRed in a 10 MW diesel generator in Italy, in a 20 MW battery storage installation in the UK and in multiple onshore renewable electricity generation installations in the EEA, which, in the meaning of UK unbundling legislation, are not “relevant producers or suppliers”:

- 26 projects in the UK with an installed generation capacity of in total 455 MW.
- 3 projects in Ireland with an installed generation capacity of in total 35.2 MW.
- 24 projects in France with an installed generation capacity of in total 178.2 MW

Ofgem furthermore mentions interests of the ultimate controllers of Walney Extension OFTO in “other generation” installations which, however, are not “relevant producers or suppliers” in the meaning of UK unbundling legislation, since they are exempt from the requirement to hold a license. Ofgem explicitly mentions the following projects: Paul’s Hill Wind Farm, Crystal Rig I Wind Farm, Rothes I Wind Farm and Mid Hill Wind Farm. No detailed information is provided by Ofgem, but according to the information available to the Commission these wind farms are all onshore, located in Scotland and have considerable generation capacity.

Ofgem notes that, as pointed out by the Commission on the occasion of past certifications, the Electricity Directive does not limit relevant generation or supply interests to those over a certain capacity. Ofgem states that it has therefore considered these small-scale interests as well as the interest in “other generation” for the purpose of assessing whether there is any risk of discrimination.

Ofgem notes that MC and InfraRed also hold interests in a number of “relevant producers or suppliers” that are located outside the EEA: in North America, Asia and Australia.

MC and InfraRed also have interests in future generation projects which will become operational between 2020 and 2022. Ofgem notes that these projects are not covered by the assessment on which the draft decision is based, since their details are not yet sufficiently certain to undertake properly informed consideration. These future interests indicated in the draft decision are: In the case of MC, minority interests in a 700 MW offshore wind farm in the Netherlands<sup>6</sup> and a 950 MW offshore wind farm in the UK<sup>7</sup>; in the case of InfraRed, full ownership of solar photovoltaic projects in Spain with a capacity of 1.5 GW<sup>8</sup>.

In its draft decision, Ofgem “considers that there is no realistic prospect or incentive for the Applicant [Walney Extension OFTO], alone or in cooperation with other OFTOs under the control of the ultimate controllers, to discriminate in favour of the Relevant Producers or

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<sup>6</sup> <https://www.government.nl/latest/news/2016/07/05/netherlands-offshore-wind-farm-borssele-cheapest-world-wide>

<sup>7</sup> <https://www.mitsubishicorp.com/jp/en/pr/archive/2018/html/0000034230.html>

<sup>8</sup> <https://www.ircp.com/news-media/news/article/infrared-capital-partners-and-progressum-reach-agreement-regarding-15gw-solar-photovoltaic-in-spain.html>

Suppliers [pursuant to UK legislation] and/or the Trading Companies [ElectroRoute and Green Frog], or vice versa”.

Firstly, OFGEM considers the market power the ultimate controllers of Walney Extension OFTO have as not significant. Ofgem estimates that their aggregate share of the generation market is currently less than 3% of the GB market and less than 1% of the total EU market. Taking into account future projects their share would increase to slightly over 4%. Ofgem further explains that of those generation interests only eight with a total capacity of just under 767 MW are registered to provide balancing services to GB and Northern Ireland. Of those generation interests seven with a total generation capacity of 600 MW are wind generation. Ofgem generally notes that the majority of the generation controlled by Walney Extension OFTO is wind generation. Ofgem considers that only flexible generation, hence not wind generation, could exert market power. As regards the possibility to use the control of the OFTOs for benefitting generation assets, Ofgem compared the total generation capacity which rely on the OFTOs controlled by Walney Extension OFTO’s ultimate controllers (around 3.3 GW) with the additional generation capacity which will be available to the GB transmission system in winter 2019/2020 (around 7.5 to 9 GW). Because this additional generation capacity is higher than the generation capacity linked by the controlled OFTOs, Ofgem considers it unlikely that these OFTOs would be able to influence market prices.

Secondly, Ofgem points to the specific characteristic of the transmission system to be owned and operated by Walney Extension OFTO: it will be a radial (point-to-point) connection between the offshore wind park and the onshore connection point. The onshore network is operated by National Electricity Transmission System Operator (hereafter “NETSO”), hence an entity independent of Walney Extension OFTO or its ultimate controllers, who also does not have access to the information of NETSO, e.g. as regards system availability or which generation capacities are dispatched. Furthermore, Ofgem considers that Walney Extension OFTO’s transmission system is not in close proximity to generation or supply interests of Walney Extension’s ultimate controllers, either for reasons of geographic proximity or because of limited available interconnections.

Thirdly, Ofgem points to the safeguards provided by the OFTO Regime and the license under which Walney Extension OFTO will operate. The licence restricts the ability of Walney Extension OFTO to limit the expansion of the offshore wind park by requiring to offer terms for connection of the wind farm, also in case of its expansion. While there are limits the Walney Extension OFTO can be required to invest, Ofgem explains that in case of higher additional investment needs into transmission capacity, it would carry out a new tender for such construction. Under the OFTO Regime, operators could also be penalised in case transmission system availability falls below 98% with up to 50% of its revenue stream (10% per year over five years). Ofgem estimates that the maximum penalty would on average be between GBP 30 million to GBP 34 million. The OFTO License will also include reporting requirements as well as obligations aiming at preventing the sharing of data and other information with any associated businesses which further limits the ability of OFTOs to discriminate in favour of generation or other interests.

Furthermore, given that MC and Chubu are registered in Japan, hence in a third country, Ofgem is also required to ascertain that granting the certification would not put at risk the security of energy supply of the UK and the Union, in accordance with the requirements set out in Article 11 Electricity Directive. Ofgem asked the UK Department for Business, Energy & Industrial Strategy (hereafter “BEIS”) for its opinion. In its letter of 1 August 2019 BEIS

concluded that it does not consider that the security of electricity supplies in the UK or in any other EEA state would be put at risk by the certification of Walney Extension OFTO.

On this basis, Ofgem submitted its draft decision to the Commission requesting an opinion.

### III. COMMENTS

On the basis of the present notification the Commission has the following comments on the draft decision.

#### 1. Generation and supply interests linked to Walney Extension OFTO's controllers

##### *Background to the Commission assessment*

Article 9(1)(b)(i) Electricity Directive prohibits the same person(s) from directly or indirectly exercising control over an undertaking performing any of the functions of generation or supply, and directly or indirectly exercising control or exercising any right over a TSO or over a transmission system. Article 9(1)(b)(ii) Electricity Directive prohibits the same person(s) from directly or indirectly exercising control over a TSO or over a transmission system, and directly or indirectly exercising control or exercising any right over an undertaking performing any of the functions of generation or supply. The objective which the unbundling rules of the Electricity and Gas Directives pursue is the removal of any conflict of interest between, on the one hand, generators/producers and suppliers and, on the other hand, TSOs.

Nevertheless, there may be exceptions to the strict application of EU unbundling rules. As explained in the Staff Working Paper *'Ownership Unbundling: The Commission's practice in assessing a conflict of interest including in the case of financial investors'* (SWP (2013) 177), a certification of a TSO should not be refused in cases where it can be clearly demonstrated that there is *no incentive* and *ability* for a shareholder in a TSO to influence the TSO's decision making in order to favour its generation, production and/or supply interest to the detriment of other network users.

However, the Commission considers that the means with which the legislator intended to pursue the objective of removing any conflict of interest between, on the one hand, generators/producers and suppliers and, on the other hand, TSOs is to provide for a *structural* solution for the problems that owners of electricity or gas infrastructure may use the ownership over this infrastructure (constituting a natural monopoly or an "essential facility") to favour their own generation or supply business. The unbundling regime pursuant to EU legislation is meant to prevent such practices and replaces the previous regime of behavioural measures (reporting, ex post control) by a structural separation between generation/supply and transport infrastructure which excludes the possibility to use the infrastructure to influence competition.

Exceptions to the strict application of EU unbundling rules should therefore be limited to cases where, due to an unambiguous absence of an incentive and ability for a shareholder in a TSO to influence the TSO's decision-making in order to favour its generation and/or supply interest to the detriment of other network users, prohibiting person(s) from investing in a TSO would be disproportionate. The Staff Working Paper assumed that such cases would mainly relate to globally active holding companies owning, *inter alia*, a TSO or to financial investors whose investment strategy typically involves investments in both renewable energy generation assets and grid transmission infrastructure with a view to benefiting from regulated income.

One example mentioned in the Staff Working Paper is a case where the holding company of an electricity TSOs also controls generation interests on another continent. Other examples concern electricity TSOs which also own smaller generation assets in other countries, e.g. a waste incinerator or a combined heat and power plant mainly providing heat to a district heating system which also produce electricity and which operate in a regulated system.

#### *Assessment of a possible conflict of interest*

As indicated above in Section II, the applicant's shareholders hold a range of participations in electricity generation and supply, located both within the Union and in various third countries.

The Commission agrees with Ofgem that the generation and supply interests controlled by Walney Extension OFTO's ultimate controllers which are located on other continents do not pose a risk as regards a possible conflict of interests: Due to the geographical distance there exists neither a direct link nor is it likely that at any time in the future such a physical connection of the markets in question will be established. Therefore, it is obvious that there is no incentive and ability for a shareholder in a TSO located in the UK to influence the TSO's decision making in order to favour such generation or supply interest to the detriment of other network users.

The Commission also acknowledges that many generation interests of Walney Extension OFTO's ultimate controllers located within the EEA are of a relatively small scale and are geographically distant from the transmission system operated by Walney Extension OFTO. The Commission notes that Ofgem focuses its assessment on "relevant producers or suppliers" as defined in UK unbundling legislation. However, given the increasing share of renewable electricity production and the increasing importance of energy storage solutions, the cumulation of smaller generation capacities should be fully taken into account when assessing if there is an incentive and ability for a shareholder in a TSO to influence the TSO's decision-making in order to favour its generation or supply interest to the detriment of other network users.

Walney Extension OFTO's ultimate controllers also hold substantial participations in generation and supply interests located in the UK or neighbouring countries, and have indicated concrete plans for additional considerable investments in such assets.

Whereas the Staff Working Paper refers to cases where the amount of energy produced by shareholders of a TSO was considered insignificant, the same cannot be said in the present case where the shareholders hold generation assets equivalent to around 3% of the GB generation market and this share is expected to grow to more than 4% with currently planned investments.

While Ofgem stresses that interconnections to neighbouring countries are limited, this appears to be a transitory situation: According to the UK's Draft Integrated National Energy and Climate Plan (NECP) published on 29 January 2019<sup>9</sup> the UK government sees a potential for adding further 9.5 GW of interconnection capacity to the current 3 GW within a decade. While the Walney Extension offshore wind farm is located in the Irish Sea, taking into account planned grid developments would be even more important in case of transmission systems for offshore wind farms in the North Sea, given that the UK government actively

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<sup>9</sup> <https://www.gov.uk/government/publications/uk-national-energy-and-climate-plan-necp>



pursues cooperation projects in the context of the high-level group on North Seas energy cooperation<sup>10</sup>.

In relation to the generation and supply interests of Walney Extension OFTO's shareholders located in the UK, Ofgem increasingly relies on behavioural safeguards enshrined in the regulatory regime for the required clear demonstration that there is no incentive and ability for a shareholder to influence the TSO's decision making in order to favour these generation or supply interests.

Notably, Ofgem argues that a conflict of interest can nevertheless be excluded due to the limited responsibility of OFTOs, the behavioural safeguards in place (e.g. fines for interruptions) and due to the allegedly insignificant market share of a) their generation interests and b) the generation capacity linked by OFTOs controlled by the parties, by comparison to the aggregate UK market/capacity.

As regards the incentive for discriminatory behavior, the Commission's Staff Working Paper explains that where generation activities have a guaranteed income and hence are not sensitive to wholesale price fluctuations, there is less scope for a conflict of interest. However, the guaranteed income e.g. of an offshore wind farm stemming from a Contract for Difference is usually limited to 15 years<sup>11</sup>, after which the produced renewable electricity will be traded on the market. Green Frog's Short term operating reserve (STOR) contracts with National Grid for its diesel generators end in 2025.

As regards the ability for discriminatory behaviour, the Commission acknowledges that the OFTO Regime as well as the rules according to which NETSO manages the electricity system provides for a range of behavioural safeguards. However, there are limits to the extent such regulatory safeguards can be considered as suitable replacements for the above mentioned structural separation imposed by the Union legislator.

Both MC and InfraRed are also shareholders in other OFTOs previously certified by Ofgem. In its opinion on draft certification of Galloper OFTO<sup>12</sup>, the Commission had already expressed certain reservations as to the compatibility of the envisaged certification with the requirements of the Electricity Directive and had asked Ofgem to investigate further as to whether there is sufficient certainty that MC and InfraRed will not have any incentives to influence the markets using their transmission lines.

In the present draft certification, Ofgem has included a more in-depth analysis as regards the potential market impact of the generation and supply interests held by the applicant.

In particular, Ofgem notes, as regards the potential participation in the UK balancing market of those generation interests controlled by the Applicant's controllers with a total generation capacity of just under 767 MW, that "it is highly unlikely that these generators could exert any market power" since 600 MW of this capacity is wind generation which is unflexible whereas "only flexible generation can be used to exert market power". However, the absence of market power is not sufficient to pass the legal test established by the Staff Working Paper

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<sup>10</sup> <https://ec.europa.eu/energy/en/topics/infrastructure/high-level-groups/north-seas-energy-cooperation>; see also page 37 of the UK's Draft Integrated National Energy and Climate Plan (NECP) published on 29 January 2019

<sup>11</sup> <https://www.gov.uk/government/publications/contracts-for-difference/contract-for-difference>

<sup>12</sup> Commission opinion C(2019) 5994 final of 7 August 2019

as to whether a conflict of interest can be clearly excluded. On the contrary, the fact that an exercise of market power by the Applicant's controllers via their generation interests is merely "highly unlikely" demonstrates that a conflict of interest cannot be excluded.

In view of the not insignificant generation assets held by the Applicant's shareholders on the UK market and the fact that a conflict of interest cannot be excluded as regards the balancing market, the present case cannot be considered as supported by the doctrine on financial investors developed in the Commission's Staff Working Paper.

Thus, in view of the Commission the certification of Walney Extension OFTO as an ownership unbundled TSO would no longer be possible to align with the clear wording of the Directive requiring a structural separation of generation and supply interests on the one hand and transmission assets on the other hand.

Based on the above, the Commission invites Ofgem to reconsider its assessment that, given the existing generation and supply interests, Walney Extension OFTO meets the requirements for being certified as ownership unbundled TSO.

## **2. Application of Article 11 – Certification in relation to third countries**

Pursuant to Article 11, Ofgem is to refuse certification unless it is demonstrated, on the basis of an assessment, that granting certification does not put at risk the security of supply of the UK or the EU. In the present case, the application of Article 11 is triggered due to the fact that MC and Chubu are registered in Japan.

In this context, Ofgem enquired with the Department for Business, Energy & Industrial Strategy (hereafter "BEIS") if the certification of Walney Extension OFTO would put the security of electricity supply of the UK or any other EEA States at risk.

BEIS concluded in their letter of 1 August 2019 that this is not the case, since i) Walney Extension OFTO would only control a specific OFTO without much impact on the UK electricity system as a whole, and ii) from the perspective of BEIS' wider work on potential risks of foreign investment in the UK energy system, companies from Japan do not, in and of itself, trigger particular concerns.

In relation to the first point, BEIS notes that the wind farm connected by Walney Extension OFTO has a capacity of 659 MW, whilst the UK has a peak demand of around 60 GW, and is connected with the national transmission system operated by National Grid Electricity Transmission on a point-to-point basis and is thus not part of a meshed network.

### *Commission assessment*

Japan is an OECD member and – as also most EU Member States – a member of the International Energy Agency (IEA), an organisation which has among its main tasks to increase the security of the energy supply of its members. Both the EU and Japan are cooperating on energy issues in the G7 context and are partners through the multilateral ITER Project. An Economic Partnership Agreement between the EU and Japan was finalised in 2017 and entered into force on 1 February 2019<sup>13</sup>. Furthermore, at the EU and Japan Summit on 6 July 2017 a political agreement was achieved on the main elements of a Strategic

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<sup>13</sup> <http://ec.europa.eu/trade/policy/in-focus/eu-japan-economic-partnership-agreement/>

Partnership Agreement to increase cooperation including on energy<sup>14</sup> and negotiations on this agreement were concluded on 25 April 2018<sup>15</sup>. On 11 July 2017 a ‘Memorandum of Cooperation between the EU and Japan on promoting and establishing a liquid, flexible and transparent global Liquefied Natural Gas (LNG) market’ was signed, further showing how closely the EU and Japan are cooperating in addressing issues of security of supply. Most recently, the EU and Japan committed to establishing a partnership on sustainable connectivity and quality infrastructure, including on energy, at the summit of 25 April 2019.

In view of the above, and given both the limited amount of generation capacity connected via the Walney Extension OFTO system and the limited impact of Walney Extension OFTO on the operation of the UK's national transmission system mentioned by BEIS, the Commission shares the view that the granting of certification to Walney Extension OFTO would not put at risk the security of supply of the UK or the EU.

### **3. Ongoing monitoring**

The Commission recalls the obligation set out in Article 10(4) of the Electricity Directive for national regulatory authorities to monitor the continuing compliance of TSOs with the unbundling requirements of Article 9 Electricity Directive.

Should Ofgem decide to certify Walney Extension OFTO, the Commission invites Ofgem to continue monitoring the case also after the adoption of the final certification decision in order to satisfy itself that no new facts emerge which would justify a change of its assessment.

## **IV. CONCLUSION**

Pursuant to Article 3 Electricity Regulation, Ofgem shall take utmost account of the above comments of the Commission when taking its final decisions regarding the certification of Walney Extension OFTO, and when it does so, shall communicate its decisions to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take *vis-à-vis* national regulatory authorities on any other notified draft measures concerning certification, or *vis-à-vis* national authorities responsible for the transposition of EU legislation, on the compatibility of any national implementing measure with EU law.

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<sup>14</sup> [http://europa.eu/rapid/press-release\\_IP-17-1927\\_en.htm](http://europa.eu/rapid/press-release_IP-17-1927_en.htm)

<sup>15</sup> [https://eeas.europa.eu/sites/eeas/files/factsheet\\_eu-japan\\_strategic\\_partnership\\_agreement\\_japan.pdf](https://eeas.europa.eu/sites/eeas/files/factsheet_eu-japan_strategic_partnership_agreement_japan.pdf)

The Commission will publish this document on its website. The Commission does not consider the information contained therein to be confidential. Ofgem is invited to inform the Commission within five working days following receipt whether and why they consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which they wish to have deleted prior to such publication.

Done at Brussels, 5.12.2019

*For the Commission*  
*Kadri SIMSON*  
*Member of the Commission*

