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COMMISSION OPINION

of 7.2.2018

**pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Articles 10(6) of Directive
2009/72/EC - United Kingdom - Certification of Nemo Link Limited**

(Only the English text is authentic)

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I. PROCEDURE

By letter dating 5 December 2017, the Commission received a notification from the national regulatory authority in the United Kingdom responsible for Great Britain, the Authority for Gas and Electricity Markets (hereafter "Ofgem"), of a preliminary decision concerning the certification of Nemo Link Limited (hereafter "Nemo") as transmission system operator for electricity.

Pursuant to Article 3(1) of Regulation (EC) No 714/2009¹ (hereafter "Electricity Regulation"), the Commission is required to examine the notified draft decision and deliver an opinion to the relevant national regulatory authority as to its compatibility with Article 10(2) and Article 9 of Directive 2009/72/EC² (hereafter "Electricity Directive").

II. DESCRIPTION OF THE NOTIFIED DRAFT DECISION

Nemo is a joint venture which will develop, own and operate an electricity interconnector between Zeebrugge (Belgium) and Richborough (Kent, UK) with a planned technical capacity of 1GW. The project is part of the Union list of Projects of Common Interest (PCI)³. Joint venture partners are the UK entity National Grid Interconnector Holdings Limited and the Belgium entity Elia System Operator NV/SA (hereafter "Elia") with 50% of voting rights each.

National Grid Interconnector Holdings Limited is a 100% subsidiary of National Grid Holdings One plc which is a 100% subsidiary of National Grid plc (hereafter "NG"). Ofgem considers NG to be one of the two ultimate controllers of Nemo, since it has the power to nominate half of Nemo's Directors. NG is also the ultimate controller of TSO National Grid Electricity Transmission plc.

In Opinion C(2012) 2735 of 19 April 2012, the Commission did not object to the certification as TSOs of "National Grid Electricity Transmission plc" (hereafter, "NGET") and "National Grid Interconnectors Limited" (hereafter "NGIL").

¹ 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.

² 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.

³ Commission Delegated Regulation (EU) 2016/89 of 18 November 2015 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest, OJ L19/1 of 27.1.2016.

Elia is the TSO for electricity in Belgium. In support of its certification, the European Commission delivered Opinion C(2012) 7142 of 8 October 2012. Ofgem considers Publi-T to be the other ultimate controller of Nemo, since it is the largest shareholder of Elia holding 44.97% of shares⁴, most of which are category C shares, the most influential share category⁵.

Neither Elia and NG themselves nor any entities affiliated with them have control over undertakings considered to be a "relevant producer or supplier of [gas or] electricity" under UK national law. Moreover, Ofgem considers that NG's interests in generation activities in North America are not relevant for NG's transmission business in Europe.

Against this background, Ofgem considers the ownership unbundling requirements as satisfied and submitted its draft decision to the Commission requesting an opinion.

III. COMMENTS

As a preliminary comment, the Commission recalls the fact that the Electricity Directive does not specify a minimum threshold in the definitions of generation or supply in Article 2(1) and Article 2(19) respectively. Hence, even small-scale electricity generation or supply may be relevant when assessing compliance with the unbundling requirements set out in Article 9 Electricity Directive.

However, the Commission notes that the reasons for which NG's subsidiaries NGET and NGIL, and Elia are already certified in accordance with the ownership unbundling model according to Article 9(1) of the Electricity Directive are also valid as regards Nemo. In its opinions referenced above on the draft certification decisions, the Commission agreed to the approach taken by the respective national regulatory agencies. In the present case, Ofgem's preliminary decision and its appendixes do not include information which would require the Commission to change its opinion or put into question that the responsible national regulatory authority had taken utmost account of the Commission's observations as regards Elia raised in Opinion C(2012) 7142. According to the information provided, Nemo satisfies the ownership unbundling requirements according to Article 9(1) of the Electricity Directive.

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.

IV. CONCLUSION

Pursuant to Article 3 of the Electricity Regulation, Ofgem shall take utmost account of the above comments of the Commission when taking its final decisions regarding the certification of Nemo, 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 Union legislation, on the compatibility of any national implementing measure with Union law.

⁴ 44.96% as at 16 May 2017 (<http://www.eliagroup.eu/Investor-Relations/Elia-share/Shareholder-structure>)

⁵ See Articles of Association of Elia (Nemo Certification Preliminary Decision Appendix 7).

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, 7.2.2018

For the Commission
Miguel ARIAS CAÑETE
Member of the Commission

