



Brussels, 21.1.2013
C(2013) 281 final

COMMISSION OPINION

of 21.1.2013

**pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of
Directive 2009/72/EC – United Kingdom - Certification of TC Lincs OFTO Limited**

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1. PROCEDURE

On 23 November 2012, 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"), in accordance with Article 10(6) of Directive 2009/72/EC¹ (hereafter, "Electricity Directive"), of draft decisions on the certification of an offshore Transmission System Operator (TSOs) for electricity. The Applicant is TC Lincs OFTO Limited (hereafter, "Lincs"). Pursuant to Article 3(1) Regulation (EC) No 714/2009² (hereafter, "Electricity Regulation") the Commission is required to examine the notified draft decisions and deliver an opinion to the relevant national regulatory authority as to their compatibility with Article 10(2) and Article 9 of Directive 2009/72/EC.

2. DESCRIPTION OF THE NOTIFIED DECISION

Background

Transmission Capital Partners (a consortium of Transmission Capital, International Public Partnerships and Amber Infrastructure Group) was announced as the preferred bidder for the Lincs offshore transmission project on 9 May 2012. The Applicant is expected to become a licensed OFTO (offshore transmission system operator) in 2013. The Lincs transmission system connects the Lincs Wind Farms to the onshore substation at Walpole, Norfolk. The project connects to the national grid at the National Grid Electricity Transmission (NGET) substation at Walpole. The Commission has already issued a reasoned opinion on NGET.³

To date Transmission Capital Partners (TCP) has been awarded four offshore transmission owner licences. Each of these four projects are ultimately owned and controlled by the same legal persons, namely International Public Partnerships Limited (hereafter, "INPP") and Amber Infrastructure Group (hereafter, "AIGHL") Holdings Limited and are part of the same corporate group.

The applicant has applied for certification in accordance with the ownership unbundling model. The only model that applies to license OFTOs in Great-Britain is full ownership unbundling. Directive 2009/72/EC only makes the other models available where the particular transmission system belonged to a vertically integrated undertaking (as defined in Directive 2009/72/EC) as on 3 September 2009 and therefore the other models are not relevant in this case.

¹ 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.

² 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

³ Commission Opinion C(2012)2735

Ofgem has analysed whether and to what extent the Applicant complies with the requirements of the ownership unbundling model as laid down in the UK legislation transposing the Electricity Directive. In its draft decision, Ofgem has found that the Applicant complies with the requirements of the ownership unbundling model. On this basis, Ofgem submitted its draft decision to the Commission requesting for an opinion.

3. COMMENTS

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

As noted above, the persons who control the applicant for certification in this case also control other offshore transmission systems, specifically TC Robin Rigg OFTO Limited, TC Gunfleet Sands OFTO Limited, TC Barrow OFTO Limited and TC Ormonde OFTO Limited. In this regard, Ofgem already concluded that the applicants complied with the ownership unbundling model as set out in GB legislation. On 27 April 2012 the Commission issued an opinion (C(2012) 3006 final) (hereafter, "the 27 April reasoned opinion") in relation to that application for certification.

In the 27 April reasoned opinion, the Commission considered that, before reaching its final, decision, Ofgem should verify that persons who controlled those transmission systems did not control a production or supply undertaking and that any individual who had control or joint control of AIGHL did not exercise rights in a production or supply undertaking.

In relation to this application, Ofgem considers that sufficient evidence is presented to confirm that there is no relevant producer or supplier within the ultimate controllers' groups. Moreover the applicant has confirmed that none of the individuals with shareholdings in AIGHL, one of the ultimate controllers, controls electricity or gas production or supply (Annex 3.6 of the preliminary decision). The Commission has no reason to consider that this information is inaccurate.

In the 27 April reasoned opinion, the Commission also set out its consideration that, as the requirements of Article 9(1) of the electricity directive also relate to the exercise of rights in production or supply undertakings, Ofgem should verify that the persons controlling the applicant company did not exercise rights in undertakings performing any of the functions of production or supply of electricity or gas. At paragraph 5.15 of their preliminary decision in relation to this applicant, Ofgem states that "We can confirm that neither (sic) of these three persons hold any right in relation to an undertaking engaged in electricity or gas production or supply". This is expressly related to the previous 27 April Reasoned Opinion and is based on information provided by the applicant. The Commission has no grounds to consider that the information provided by the applicant in this case is inaccurate.

The Commission welcomes the steps taken by Ofgem to address the points raised in relation to the 27 April reasoned opinion. Moreover as noted at section 8 of Ofgem's preliminary decision, it has on-going obligations to monitor and review whether a transmission system operator should continue to be certified, and certified transmission system operators are obliged to inform Ofgem of any significant changes relevant to certification.

4. CONCLUSION

Pursuant to Article 3(2) of the Electricity and Gas Regulations, Ofgem shall take utmost account of the above comments of the Commission when taking its final decisions regarding the certification of the Applicants, and when it does so, shall communicate these decisions to the Commission.

The Commission's position on these particular notifications 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 as regards the compatibility of any national implementing measure with EU law.

Done at Brussels, 21.1.2013

For the Commission
Günther OETTINGER
Member of the Commission

