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Our ref
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Your ref
EN020022
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By email

Dear Sirs

Application by AQUIND Limited for an Order granting Development consent for the Aquind Interconnector Project (PINS Ref: EN020022)

Examination Timetable

We write on behalf of the Applicant to address the timetable for the remainder of the Examination and in particular the very real risk of prejudice to the Applicant's position which arises due to the proximity of Deadlines 7c and 8 to the hearings on 17, 18 and 19 February 2021.

As the Examining Authority ("ExA") will appreciate, the scheduling of the hearings commencing two days after Deadline 7c (and a day after the Deadline 7c submissions were published online) afforded the Applicant little opportunity to consider and reflect on the responses and submissions of other parties prior to the hearing sessions, in particular ISH4 on the draft Development Consent Order. This resulted in the Applicant having to address a range of suggested changes to the draft Development Consent Order, without the necessary notice to more fully respond. Whilst it sought to do so, both it and the other parties who had only recently had the opportunity to review the Deadline 7c submissions, were obliged to defer responses to later in the Examination. The inevitable consequence of the programme was that the hearing session was not as effective as it might have been in identifying the remaining genuine points of difference, some which it is anticipated will be confirmed in writing following ISH4. Whilst the ExA requests for earlier responses to be issued where practicable are noted, it is the case that comments of other parties may not be known until Deadline 8 or so close to Deadline 8 that the Applicant may not have the opportunity to respond.

Whilst the immediate prejudice caused by this tightness of the timetable can be remedied through the parties Deadline 8 responses, as the ExA itself has recognised, given that is the final deadline, this gives rise to the very real risk that the Applicant will be deprived of any effective opportunity to comment on the final positions of the other parties; an opportunity which the ExA have recognised the Applicant must be given. Whilst the ExA has encouraged and confirmed it will accept as "Additional Submissions", any responses that other parties are able to provide before Deadline 8,

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such an informal request provides no assurance to the Applicant that responses will be provided to it in time for it to be able to respond effectively by 1 March as presently required. This would result in very real prejudice to the Applicant.

In order properly to avoid the very real risk that the Applicant will be deprived of an appropriate opportunity to respond to points which it considers need to be addressed by it, the Applicant would ask that the ExA gives consideration to adding a new deadline, Deadline 8b into the Examination timetable set for 8 March 2021 by which the Applicant is to provide any final response to matters raised in other parties submissions at Deadline 8 or those received very close to Deadline 8. It is confirmed that where the response to the matters submitted at Deadline 8 gives rise to the need for any further amendments to the draft DCO to be submitted at Deadline 8, the Applicant would look to submit an update to this together with an update to the schedule of changes, together with any other information the ExA may request. The existing requirements of Deadline 8 would remain unchanged. It is also confirmed the Applicant will only seek to respond to matters where new points are raised to which it has not previously responded.

This minor revision to the timetable would have the very real benefit of allowing all other parties an opportunity to advise the ExA of their settled positions within the original Examination timeframe at Deadline 8, ensuring fairness to them, whilst ensuring the prejudice to the Applicant is avoided.

In conclusion, our request is that the ExA exercises its power under Rule 8(3) of Infrastructure Planning (Examination Procedure) Rules 2010 to revise the Examination timetable to include a Deadline 8b for the Applicant's final response to the Deadline 8 submissions. We hope that the ExA can see the merits of this approach in the interests of ensuring fairness to all and we would welcome your early response.

Yours faithfully

Herbert Smith Freehills LLP