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To:	Aquind Interconnector
Cc:	Jones, Hefin; Kasseean, Anita; Laven, Kieran; Bazalo, Lisa; Hallam, Amy
Subject:	AQUIND DCO: Post Hearing Note
Date:	23 February 2021 14:55:32
Attachments:	7.9.48 Post-Hearing Note in respect of the non UK planning consents and approvals required.PDF

Dear Sirs,

At CAH3 Mr Roscoe requested a post hearing note in respect of the non-UK planning consents and approvals required in connection with AQUIND Interconnector to identify the regulatory approvals and the French consents required for the Project and the route to and options for the obtainment of those and to explain the current position in relation to those, for the purpose of explaining what is reasonably required by the Applicant before funding to allow for the construction of the Project in the UK and in France is secured. This note was promised to be delivered by not later COB 23/02/2021.

Please see attached that note. I should be grateful if you could provide this to the ExA and arrange for this to be uploaded onto the PINS project webpage at the earliest opportunity.

I have copied the representatives of Mr G and Mr P Carpenter and of Portsmouth City Council to ensure they receive this information at the earliest possible opportunity, as requested.

Best regards,

Martyn

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AQUIND Limited

AQUIND INTERCONNECTOR

Applicant's Post Hearing Notes - Post Hearing Note in respect of the non UK Planning Consents and Approvals required in connection with AQUIND Interconnector

The Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010, Rule 8(c)

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POST-HEARING NOTE IN RESPECT OF THE NON UK PLANNING CONSENTS AND APPROVALS REQUIRED IN CONNECTION WITH AQUIND INTERCONNECTOR

1. INTRODUCTION

1.1 This post-hearing note is submitted on behalf of the Applicant in respect of matters raised in relation to regulatory status and consents required to be obtained in France for AQUIND Interconnector (the "**Project**").

1.2 At Issue Specific Hearing 4 in respect of matters relevant to the draft development consent order and at Compulsory Acquisition Hearing 3 matters were raised relevant to the current position in respect of the obtainment of the necessary regulatory status for the Applicant to operate the Project. Matters were also raised relevant to the Applicant's management of the consenting process in France.

1.3 This note is produced to explain the current position in relation to both, to identify the regulatory approvals and the French consents required for the Project and the route to and options for the obtainment of those, for the purpose of explaining what is reasonably required by the Applicant before funding to allow for the construction of the Project in the UK and in France is secured.

2. COMPULSORY ACQUISITION TESTS AND GUIDANCE

2.1 The guidance related to procedures for the compulsory acquisition of land, DCLG 2013 (the "**Guidance**"), provides guidance for applicant's whose application for a development consent order seeks authorisation for the compulsory acquisition of land or rights over land. Paragraphs 8-19 of the Guidance set out some of the factors which the Secretary of State will have regard to in deciding whether or not to include a provision authorising the compulsory acquisition of land in a development consent order.

2.2 In the context of future approvals and consents to be obtained, paragraph 9 of the Guidance is of relevance where this provides "*[the applicant] should also be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available. Otherwise, it will be difficult to show conclusively that the compulsory acquisition of land meets the two conditions in section 122*".

2.3 Paragraphs 12 and 13 are also of particular relevance, emphasising that in addition to establishing the purpose for which compulsory acquisition is sought (i.e. why the land over which compulsory acquisition powers are sought is needed for the development for which consent is sought[1]), section 122 of the Planning Act 2008 ("**PA 2008**") requires the Secretary of State to be satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily.

2.4 Paragraph 13 provides that for there to be a compelling case in the public interest *"the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired*".

2.5 Of relevance to the satisfaction of these tests, it is necessary for the Secretary of State to take into account information relevant to the resource implications of the proposed scheme and to also take into account other relevant matters (see paragraphs 17 – 19 of the Guidance).

2.6 Paragraph 17 of the Guidance provides that "*Any application for a consent order authorising compulsory acquisition must be accompanied by a statement explaining how it will be funded. This statement should provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required*."

[1] See paragraph 11 of the Guidance

2.7 With regard to the resource implications of the scheme and particularly funding availability, paragraph 18 of the Guidance identifies that "*The timing of the availability of the funding is also likely to be a relevant factor*" and that "*Applicants should be able to demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the order being made*".

2.8 Paragraph 19 of the Guidance then explains in relation to 'impediments' that applicant's will need to be able to demonstrate that "*any potential risks or impediments to implementation of the scheme have been properly managed*" and that "*they have taken account of any other physical and legal matters pertaining to the application, including … the need to obtain any operational and other consents which may apply to the type of development for which they seek development consent.*"

Application of the Guidance

2.9 Turning to the application of this Guidance, the point at which the Secretary of State must be satisfied that the requirements of section 122 of the PA 2008 are met is the date of the decision on the Applicant's application for the DCO. In that decision, the issue of scheme cost funding is relevant to the second of the section 122(1) tests i.e. whether the Secretary of State is satisfied that the there is a compelling case in the public interest for the compulsory acquisition.

2.10 As explained above, Paragraph 9 of the Guidance advises that the applicants must have a clear idea of how they intend to use the land which it proposed to be acquired, which is relevant to the first test and then, separately, that they should be able to demonstrate that there is a reasonable prospect of the requisite costs for acquisition becoming available. That is relevant to the second test. This is the context for the final sentence of paragraph 9 of the Guidance.

2.11 The wording of paragraph 9 of the Guidance, shows that the Secretary of State considers that a clear idea of how the applicant intends to use land which it is proposed to acquire and a reasonable prospect of the requisite funds becoming available for acquisition, are both important factors in satisfying the requirements of section 122(1).

2.12 The "*reasonable prospect*" wording is carefully and deliberately chosen. The word "*prospect*" makes it clear that the decision maker must look to the future i.e. after the order is made. The word "*reasonable*" means objectively reasonable and recognises that there may be more than one reasonable view. Taken as a whole, the decision maker is required to make a present judgement as to what is reasonably likely to occur in the future. Paragraph 9 must be read with paragraph 18 of the Guidance in which the Secretary of State provides guidance as to what is a reasonable horizon for that judgement as to future state of affairs (i.e. an applicant should be able to demonstrate that adequate funding is likely to be available to enable compulsory acquisition within the statutory period following the order being made and that the possible resource implications of a possible acquisition resulting from a blight notice have been taken account of).

2.13 Further, the reasonable prospect test is carefully chosen to avoid imposing on applicants the impossible task of demonstrating that NSIPs are free of all constraints and all possible impediments to delivery. The carefully chosen wording requires a judgment to be made as to the likely outcome of any outstanding applications/consents procedures having regard to all relevant information. It also enables the decision maker to make the necessary judgement that powers of compulsory acquisition should be authorised without prejudging the outcome of other decisions. As paragraph 19 of the Guidance makes clear, what the Secretary of State is seeking is assurance that any potential risks and impediments are being properly managed.

3. REGULATORY APPROVALS

3.1 To facilitate the operation of the Project in both the UK and France it is necessary for the Applicant to obtain the necessary regulatory status. As is explained in the Applicant's Funding Statement (REP6—021), the Applicant is actively progressing securing regulatory arrangements for the Project.

3.2 To assist the Examining Authority ("**ExA**") this section of this note provides an update in respect of the Applicant's current regulatory situation, together with a summary of the impact of the Trade and Cooperation Agreement ("**TCA**") entered into between the United Kingdom ("**UK**") and the European Union ("**EU**") (the "**parties**"), and its impact on the Project.

Appeal of ACER decision

3.3 Following the Applicant's successful appeal to the General Court of Justice of the European Union in relation to the decision of ACER's Board of Appeal not to award an exemption, the relevant proceedings at ACER's Board of Appeal (the "**BoA**") have been re-opened and are now following its due course.

3.4 The BoA have set 5 February as the date of the start of these re-opened proceedings and determined that a decision will be taken within four months, ie by 5 June 2021.

3.5 By 5 June 2021, the BoA can either decide to adopt a decision granting the Applicant an exemption or alternatively refer the application to ACER's Board of Regulators for a decision. Should the BoA decide to remit the matter to ACER's Board of Regulators ("**BoR**"), it can do so prior to 5 June 2021. A decision by the director of ACER following deliberation of the BoR would then follow the usual procedure for exemption requests referred to it and it would need to take a decision within six months of the referral from the BoA.

3.6 An exemption granted by the director of ACER following deliberation of the BoR or the BoA as a result of these proceedings would award the Applicant a regulatory status in both the UK and in France and such decision will be subject to approval by the European Commission.

3.7 In light of the judgment of the General Court of Justice, which included a very rare award of costs for the Applicant, and its overruling of the sole ground for refusal of the application, the Applicant is in a strong position and expects to be awarded an exemption decision either by the BoA or the BoR within the timeframes indicated above.

Non-impact of BREXIT on ACER Proceedings

3.8 The change in the legal framework arising out of the withdrawal of the United Kingdom from the Union has no impact on ACER's competence to decide this matter. The competence of the Agency to decide on the Exemption Request is derived from Article 17(5) of Regulation No 714/2009 (now Article 63(5) of Regulation (EU) 2019/943) and has not changed.

3.9 It is the duty of ACER to place the Applicant in the position that it would be in if the annulled act had not been adopted. That is in accordance with Article 266 TFEU and the principle of *restitutio in integrum* and, accordingly, ACER must consider the merits of the exemption request in the light of the arguments presented by the Applicant and its obligation to take all measures necessary to comply with the judgment of the General Court. Similarly, the competence of the BoA to decide the appeal derives from those regulations and the Appeal that was lodged on 17 August 2018.

3.10 Exemption decisions are by their nature declaratory and declare the conditions for exemption to be satisfied as from the date that it is requested (or from the date on which the conditions are satisfied if this is determined to be later).

3.11 In this case, the exemption to be granted by the BoA, or in the event that the matter is remitted, by the competent body of ACER, must take effect from the date of the exemption request.

3.12 The competence of ACER to decide on the exemption request is recognised and confirmed in Article 92 of the Withdrawal Agreement which provides that "*[t]he institutions, bodies, offices and agencies of the Union shall continue to be competent for administrative procedures which were initiated before the end of the transition period concerning … compliance with Union law by the United Kingdom, or by natural or legal persons residing or established in the United Kingdom*."

3.13 Further, the Trade and Cooperation Agreement between the United Kingdom and the European Union ("**TCA**") makes it clear that exemptions granted to interconnectors under Article 17 of Regulation (EC) 714/2009 or under Article 63 of Regulation (EU) 2019/943 continue to apply.

3.14 Article ENER.11 of the TCA requires the parties to ensure that existing exemptions granted to GB-EU interconnectors continue to apply. This is of particular importance for any UK energy projects currently benefitting from an exemption pursuant to Article 63 of EU Regulation 943/2009 or Article 36 of EU Directive 2019/944/EU or Article 22 of Directive 2003/73/EU, electricity regulation or the gas directive, respectively.

3.15 An exemption for the Applicant taking effect from the date of the Exemption Request would therefore be unaffected by the United Kingdom's withdrawal from the European Union.

3.16 **Exemption route under the TCA**

3.17 Should, against all expectations, the Applicant not be awarded an exemption through a decision by the BoA or the BoR, it also may avail itself of the exemption route offered by the TCA.

3.18 The TCA commits the UK and the EU to cooperating to facilitate the timely development and interoperability of energy infrastructure connecting their respective territories (i.e. interconnectors).

3.19 The provisions of the TCA, in as far as they relate to electricity interconnectors, principally follow overarching principles set out in existing EU legislation governing electricity infrastructure (e.g. TPA, unbundling, congestion management).

3.20 The TCA includes a form of exemption regime that allows the UK or the EU to decide not to apply the TPA or unbundling provisions of the TCA if the relevant conditions under the TCA are met.

3.21 Pursuant to the TCA exemption regime, the UK or the EU may decide not to apply Article ENER.8 (TPA) or Article ENER.9 (system operation and unbundling of transmission network operators) to (i) emergent or isolated markets or systems; or (ii) infrastructure that meets the conditions in Annex ENER-3 of the TCA (for reference, Annex ENER-3 is set out in full in the annex to this note).

3.22 Annex ENER-3 effectively introduces a new exemption regime in relation to GB-EU interconnectors, based on the provisions of Article 17 of Regulation (EC) 714/2009 or under Article 63 of Regulation (EU) 2019/943.

3.23 The administrative procedures of the TCA are currently being established, with appointments of members of the relevant oversight committee, the Specialised Committee on Energy (the "**SCE**"), expected to be finalised shortly. The SCE is anticipated to be fully operation in the next few weeks.

Conclusions

3.24 In summary, the Applicant has good prospects of being awarded an exemption through either the ACER or TCA route within a relatively short timeframe, and it is evidently apparent that the Applicant has fully taken into account the need to obtain and is taking all appropriate steps to properly manage the need to obtain the regulatory status required to operate the Project.

4. FRENCH CONSENTS

4.1 Whilst funding for the Project could be sought at different times depending on risk appetite, the Applicant has adjudged that before obtaining the funding required for the construction of the Project the following consents in France should be in place, in addition to regulatory status being settled and the DCO having been granted to authorise the Project in the UK:

4.1.1 *Autorisation Environnementale* – being the single environmental authorisation required for the proposals in France; and

4.1.2 *Convention d'Utilisation du Domaine Public Maritime* – being the authorisation required to lay the marine cables on the seabed in French marine territory.

4.2 The following consents/approvals are also required to deliver the Project, though the Applicant has satisfied itself that funding is likely to be able to be secured in advance of them being obtained:

4.2.1 Building permit – being the permit required to build the Converter Station, but which once an environmental authorisation has been obtained is highly unlikely not to be granted;

4.2.2 *Autorisation d'Occupation Temporaire* – being the grant of temporary occupation rights;

4.2.3 Archaeological approvals – marine and offshore; and

4.2.4 *Convention d'occupation temporaire* – being the agreement with SNCF to lay the onshore cables beneath a railway crossed by the proposed scheme in France.

4.3 This section of this note provides a short summary explanation of the planning and permitting regime in France, provides a summary of the progress made to obtain the relevant consents in France to date, and explains the processes that remain to be followed.

Background to the French planning and permitting regime

4.4 The planning and permitting process in France is examined by a range of institutions and administrative bodies at local, regional and national level.

4.5 In France, much like in the UK, applicants, otherwise known as project owners, must undertake pre-application consultation with the local communities and stakeholders most likely to be affected by the construction and/or operation phase of the project. This process is monitored by the "*Commission Nationale du Débat Public*", an independent administrative body appointing a "*Garant*" tasked with monitoring and reporting the efforts of the project owner in ensuring that the public is kept informed of the project development and of the rationale behind its decisions and choices.

4.6 One aspect of the overall planning and permitting process sees the state and its regional representatives in Normandie (*Préfecture and Direction Départementale des Territoires et de la Mer - DDTM*) review the project in light of its environmental impacts and assess the extent to which the project owner has managed to avoid, reduce and compensate impacts in developing its project (i.e. the undertaking of an Environmental Impact Assessment).

4.7 This aspect of the planning and permitting process, formalised by a public enquiry file application, contains an "*Autorisation Environnementale*", being a single environmental authorisation for the project, and a request for "*Convention d'Utilisation du Domaine Public Maritime*", being the authorisation required to lay the marine cables on the seabed in French marine territory.

4.8 Other aspects of the planning and permitting process relate to the technical specification of the project and particularly the way the project is to be integrated within the public domain. This element, in the case of the Project, sees technical representatives of the county and the region, as well as the Mayor of Hautot-sur-Mer, review the requests for "*Autorisation d'Occupation Temporaire*", temporary occupation rights known as an "AOT".

4.9 Certain elements that are used to inform the EIA process are triggered by thresholds sitting outside of the relevant EIA regulation, and these elements whilst related are therefore the subject of their own administrative process. This is the case in respect of the onshore and marine archaeological evaluation, which is managed by "*Directions Régionales Des Affaires Culturelles – DRAC*" and "*Département des Recherches Archéologiques Subaquatiques et Sous-Marines – DRASSM*" respectively, and of the Agricultural preliminary study, reviewed by the "*Chambre d'Agriculture*" (Agriculture Chamber).

Consultation (CNDP)

4.10 In September 2017 the Applicant approached the National Commission for Public Debate (CNDP) to submit the project and its connection to the French public electricity transmission network for consultation ("*concertation préalable*").

4.11 In October 2017 the CNDP decided on the organisation of a preliminary consultation. By the same decision, the committee designated Mr. Laurent DEMOLINS as the *Garant* of the consultation process.

4.12 Following the initial consultation the CNDP issued a report stating that "*the project owner has spared no efforts to raise awareness among a population that generally felt little concerned because little impacted by the project*".

4.13 The works with key stakeholders and engagement with the public continued over the course of 2018, 2019 and 2020.

4.14 In January 2021 the CNDP issued a secondary report concluding that the project owner has "*ensured that consultation has taken place in accordance with the CNDP's values of transparency and sincerity, while fully respecting the right to information and the right to public participation*" whilst identifying "*a marked contrast between the project owner, which demonstrated a clear desire to provide explanations, and some members of the public who were firmly opposed and made dialogue difficult or even confrontational*".

4.15 In parallel, the project owner has engaged actively with key stakeholders, notably the "*Comité Régional des Pêches Maritimes et des Elevages Marins de Normandie*" (fisheries committee), so as to better understand local concerns and integrate them into the development of the project.

4.16 A first convention to formalise the relationship was signed with the fisheries committee in 2017. This cooperation has continued positively and both parties are engaged actively in the drafting of a Charter to manage the cable installation works.

Autorisation d'Occupation Temporaire

4.17 For the public roads and right of way where the Project is proposed to be located requests for AOT were submitted to the CD76 (covering approx. 30km) and DIR-NO (approx. 5km) in March 2020. An additional request was submitted to DREAL (approx. 1km) in December 2020 in respect ofa small section of the AOT submitted to the CD76 but which is under the stewardship of DREAL.

4.18 For the works area at landfall, requests for AOT were submitted to the Mayor of Hautot-sur-Mer (relating to a car park and mini-golf course only, covering approx. 2500m²) in June 2020.

4.19 In November and December 2020, CD76 and DIR-NO issued draft agreements for the AOT in respect of 35km (97%) of the onshore cable route. Work is ongoing to address the technical comments and requirements of these agreements, which are expected to be finalised during spring 2021.

4.20 DREAL has not yet responded to the request, although the principles of cable installation and road reinstatement presented reflect those proposed to CD76 and DIR-NO. As such, a positive outcome is expected.

4.21 The Mayor of Hautot-sur-Mer rejected the request for the AOT in October 2020. In December 2020 the Applicant informed the Mayor of its intention to challenge the decision, both in its form and its content. The project owner remains committed to addressing the concerns of the Mayor amicably, and efforts will continue to be made to identify ways to minimise the impact on the communities most affected by the works at landfall. The Applicant's pathway to the AOT is set out in paragraphs 4.25-4.26 below.

Autorisation Environnementale

4.22 The application for the environmental authorisation was submitted in October 2019. Whilst its administrative progress was suspended in the first half of 2020 as a result of the

ongoing Covid-19 pandemic, the competent authorities resumed their examination work in the summer of 2020.

4.23 Following an evaluation by statutory consultees, initial comments and a request for supplementary information were sent to the Applicant in September 2020. The majority of these related to technical clarification with regards to the content of the application and responses were provided in December 2020.

4.24 Following the rejection of the request for AOT in October 2020 by the Mayor of Hautot-sur-Mer only, the project owner was unable to provide evidence that the easement required for the works to take place at landfall (a 50m x 50m area on the seafront car park at Hautot-sur-Mer) had been secured. As such, the *Préfecture* rejected the application.

4.25 As explained at ISH4, the Applicant is continuing to seek to acquire the rights required voluntarily. The Applicant's discussions in relation to voluntary acquisition were affected by travel restrictions due to the Covid-19 pandemic, which has meant it has not been possible for them to travel to France to discuss matters as they would like to. It is anticipated that once the situation eases and more meaningful engagement can be undertaken a more positive outcome can be achieved.

4.26 Further, and in any event, the Applicant is continuing in its efforts to obtain the relevant regulatory approvals. Whilst those approvals would not render the Applicant as a public utility, such approvals would allow the French central government to declare the project to be in the public interest, which would then allow for the prefect (the state's representative) to take a decision to confirm that the rights required for the project may be provided to the Applicant.

4.27 It must be noted that the *Arrêté Prefectoral* does not pass judgement upon the content of the application for the *Autorisation Environnementale*, which has secured favourable comments from the statutory consultees review, both onshore and offshore.

4.28 With regard to the further processes that need to be followed to obtain the *Autorisation Environnementale* once the issue regarding the land rights has been resolved:

4.28.1 The next stage is the progression of the application to be examined by the "*Conseil général de l'environnement et du développement durable*" (CGEDD). The CGEDD is the environmental authority that validates the applicant as compliant with the relevant EIA regulations.

4.28.2 Once the application is validated the *Préfecture* then provides a preliminary opinion, which if favourable marks the beginning of the public enquiry into the application.

4.28.3 The public enquiry then lasts for a period of 2 to 4 months and gives the public the opportunity to provide representations in relation to the application file submitted by the applicant and the responses from the statutory consultees, the CGEDD and the prefecture.

4.28.4 The "*commissaire enquêteur*" then collates this information from all relevant persons in relation to the application and produces a report summarising the findings and making recommendations. Following this, the *Préfecture* would deliver an *Arrêté Prefectoral* confirming the decision on whether to grant the *Autorisation Environnementale*.

4.29 **Convention d'Utilisation du Domaine Public Maritime (CUDPM)**

4.30 The CUDPM is the privileged state title to supervise the development of any activity at sea likely to adversely affect the natural state of the shore, on condition that the associated works and installations are assigned for public use, a public service or to a general interest operation.

4.31 So far the project owner has secured favourable feedback within the CUDPM process from the statutory consultee reviews. Further progress of this process currently rests on the clarification of the general interest nature of the operation. This will be resolved through the agreement on the regulatory status.

Other consents/approvals

4.32 **Building permit:** In addition to obtaining an *Autorisation Environnementale* a project owner must also obtain a building permit as part of the planning and permitting process. Whilst a project owner is free to choose when they apply for a building permit and this can be issued before an *Autorisation Environnementale*, it may only be implemented following the grant of the *Autorisation Environnementale* and therefore in practice is often obtained following this.

4.33 The application for the building permit is to be submitted following the public enquiry, ensuring all relevant matters raised therein are taken into account. Because all environmental matters will have been dealt with for the purposes of the grant of the *Autorisation Environnementale*, it would not be anticipated that any issues would arise in respect of the grant of the building permit.

4.34 **Marine Archaeology (DRASSM):** The Applicant provided DRASSM with the results of the geophysical and geotechnical marine surveys of the relevant sections of the marine cable route undertaken in 2017-2018. Following desktop analysis of geophysical and geotechnical data, followed by a diving campaign, DRASSM published the "*Evaluation archéologique de l'interconnexion électrique AQUIND Rapport Final d'Opération*" in October 2019 which clears the Applicant of archaeological constraints within its proposed works corridor, provided that the two archaeological features identified (anchors) are either avoided or collected and preserved. As such, no significant marine archaeological impact is expected as a result of the works.

4.35 **Onshore Archaeology (DRAC):** Following desktop analysis of existing cultural heritage data, DRAC recommended that a preventive archaeology campaign be carried out by the "*Institut National de Recherches Archéologiques Préventives – INRAP*" on the converter station site. This campaign is scheduled to take place in 2021.

4.36 The cable route has been cleared of all prescription, and the landfall site is to be subject to a watching brief by an appointed archaeologist at commencement of the works. As such, no significant onshore archaeological impact is expected as a result of the works.

4.37 **Convention d'occupation temporaire:** Whilst the requirements of SNCF can be prescriptive, they are essentially technical matters that necessitate an approval on the installation solution. Technical discussions are progressing with SNCF. As with the AOT, it is not uncommon for these to be secured after the *Autorisation Environnementale* have been granted.

4.38 **Convention d'occupation et de servitude:** Access and easement agreements necessary for construction of the project have been secured (notably at the converter station site on which a *Promesse unilatérale de vente* (sale agreement) has been signed). Further access and easement agreements may be sought once the environmental authorisation has been granted where joint bays are to be located on private land. The French permitting process does not require these elements to be assessed as part of the environmental authorisation, and these do not in any event constitute a must-have as the project could go ahead without them where designed to do so.

Conclusions

4.39 As is evident from the above, the planning and permitting regime in France is complex and subject to examination by a range of institutions and administrative bodies at local, regional and national level.

4.40 As is also evident from the above, the Applicant has undertaken the relevant processes to progress the necessary pre-application consultation requirements since 2017, gaining favourable feedback in this regard, and has also initiated the necessary processes to obtain the consents required to construct the Project as is appropriate at the current time. The process for obtaining the consents in France has been purposefully timed to run in parallel with the consenting processes in the UK, so as to seek to ensure the Project wide required consents are obtained in reasonable proximity to one another.

4.41 Whilst it is the case that all consents required for the Project to be constructed in France have not been obtained at this time, the Applicant is ensuring the proper management of those processes and has demonstrated both the pathway to the necessary consents and that there is a reasonable prospect of them being obtained within the timeframe identified in paragraph 18 of the Guidance.

5. CONCLUSIONS

5.1 The Applicant has properly managed and is continuing to properly manage the regulatory approvals and consents required for the Project, beyond those which would be provide by virtue of the grant of the development consent order.

5.2 Whilst it is the case that not all consents required for the Project to be constructed in France have not been obtained at this time, the Applicant has demonstrated the pathway it is following to secure those consents and that there is a reasonable prospect of the relevant applications being successful within a reasonable timeframe in accordance with paragraph 18 of the Guidance.

Herbert Smith Freehills LLP

23 February 2021

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ANNEX

Annex ENER-3 of the Trade and Cooperation Agreement

ANNEX ENER-3: NON-APPLICATION OF THIRD-PARTY ACCESS AND OWNERSHIP UNBUNDLING TO INFRASTRUCTURE

A Party may decide not to apply Article ENER.8 [Third-party access to transmission and distribution networks] and Article ENER.9 [System operation and unbundling of transmission network operators] to new infrastructure or to a significant expansion of existing infrastructure where:

(a) the risk attached to the investment in the infrastructure is such that the investment would not take place unless an exemption is granted;

(b) the investment enhances competition or security of supply;

(c) the infrastructure is owned by a natural or legal person separate, at least in terms of its legal form, from the system operators in whose systems it was or is to be built;

(d) before granting the exemption, the Party has decided on the rules and mechanisms for management and allocation of capacity.