Date: 1 March 2021

AQUIND Interconnector application for a Development Consent Order for the 'AQUIND Interconnector' between Great Britain and France (PINS reference: EN020022)

Mr. Geoffrey Carpenter & Mr. Peter Carpenter (ID: 20025030) in relation to Little Denmead Farm

Note on Paragraph 19 of the "Guidance related to procedures for the compulsory acquisition of land"

Submitted in relation to Deadline 8 of the Examination Timetable

BLAKE MORGAN

Blake Morgan LLP
6 New Street Square
London EC4A 3DJ
www.blakemorgan.co.uk

INTRODUCTION

1. The ExA raised at CAH 3 on the 19th February 2021 consideration of the paragraph 19 of the Secretary of State's Guidance: "Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land" and invited further evidence from the Applicant to enable the ExA to seek to address that paragraph of the Guidance.

2. This Note responds to that request on behalf of the Affected Party and sets out why that paragraph cannot be satisfy and would be unable to be satisfied by such material as may or may not be provided by the Applicant.

3. In essence, paragraph 19 falls, like other paragraphs of that Guidance and as a matter of trite law, to be read with the other paragraphs which provide context for its meaning in law and is subsequent application.

4. Paragraph 19 requires an Applicant (and does not burden another party so) to necessarily 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 programming of any necessary infrastructure accommodation works and the need to obtain any operational and other consents which may apply to the type of development for which they seek development consent ". The ordinary meaning of "properly" is "suitably, appropriately, completely". That paragraph is expressly encompass by paragraph 7 ("paragraphs 8-19") as a "factor" 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.

5. There are a number of factors that result in risks to, and impediments to, implementation of "the scheme" in relation to which the Secretary of State is unable to know whether they can be managed, whether or not properly so.

6. This Note is divided in the following Sections:

SECTION A – PARAGRAPH 19 OF THE PLANNING ACT CPO GUIDANCE

SECTION B – APPLICANT'S INABILITY TO SATISFY, AND FAILURE TO DEMONSTRATE SATISFACTION OF PARAGRAPH 19

APPENDIX 1 – Note on ACER litigation and Trade & Cooperation Agreement

SECTION A – PARAGRAPH 19 OF THE PLANNING ACT CPO GUIDANCE

7. The Secretary of State has issued for the purposes of the "Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land (September 2013)".

8. The guidance falls to be read as a whole and on its objective terms.

9. It is trite law that the Applicant cannot made the guidance say what it would like it to mean and that the meaning or interpretation of guidance terms is a question of law whereas the subsequent application of that guidance to the facts is a matter of fact and degree (assuming the logically prior lawful, direction as to the guidance interpretation and its meaning). Nor is the ExA entitled to rewrite the guidance of the Secretary of State. It is his guidance and not that of the ExA.

10. The Guidance is particular to the Planning Act 2008 and expressly cross-refers to the more generalised guidance of Circular 06/04 (today, the Guidance on Compulsory Purchase and The Crichel Down Rules (most recently refined as at 2019)). See paragraph 45 of the Planning Act 2008: Guidance.

11. In essence, paragraph 19 falls, like other paragraphs of that Guidance and as a matter of trite law, to be read with the other paragraphs which provide context for its meaning in law and is subsequent application.

12. Read with paragraph 7, paragraph 19 is both not itself conclusive and also requires to be evidentially underpinned so as to enable the Secretary of State to lawfully direct himself on relevant facts. If there are no existing relevant facts, he cannot properly direct himself in law. See *Tameside*.

13. The Guidance introduces paragraph 19 within paragraph 7 that encompasses paragraphs 8-19 and also addresses funding in a number of different ways, as well as the scope of funding in relation to compulsory acquisition and of project funding and different types of compensation.

14. In contrast with the express terms of the 2019 Guidance, the 2013 Guidance says this, for example:

    "7. Applicants must therefore be prepared to justify their proposals for the compulsory acquisition of any land to the satisfaction of the Secretary of State. They will also need to be ready to defend such proposals throughout the examination of the application. Paragraphs 8-19 below 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."

"8. The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored…

9. The applicant must have a clear idea of how they intend to use the land which it is proposed to acquire. They 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 (see paragraphs 11-13 below)."

15. The Secretary of State's guidance in relation to funding therefore differs from that of the 2019 Guidance. As has been stated previously, unlike page 12-13 of the latter that address local compulsory purchase resources in the following terms: (Emphasis added)

"If an acquiring authority … :

- *cannot show that <u>all</u> the necessary resources are likely to be available to achieve that end within a reasonable time-scale*

it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making…"

16. By contrast, the 2013 Guidance disaggregates acquisition funding from project funding and states a different and higher test for acquisition funding: (Emphasis added)

"9. The applicant … should also be able to demonstrate that there <u>is</u> a <u>reasonable</u> 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 (see paragraphs 11-13 below)."

17. Thus, the Secretary of State ties such funds to the very authorisation of the principle of acquisition *per se*. And in respect of wider project funds, the 2013 Guidance provides: (Emphasis added)

"17. Any application for a consent order authorising compulsory acquisition must be accompanied by a statement explaining how it <u>will</u> be funded. This statement should provide as much information as possible about the <u>resource implications</u> of both acquiring the land and implementing the project for which the land is required. It may be that the project is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty about the assembly of the necessary land. In such instances, the applicant should provide an indication of how any potential shortfalls are intended to be met. This should include the degree to which other bodies (public or private sector) have agreed to make financial contributions or to underwrite the scheme, and on what basis such contributions or underwriting is to be made.

18. The timing of the availability of the funding is also likely to be a relevant factor. Regulation 3(2) of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 allows for five years within which any notice to treat must be served, beginning on the date on which the order granting development consent is made, though the Secretary of State does have the discretion to make a different provision in an order granting development consent. 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, and that the resource implications of a possible acquisition resulting from a blight notice have been taken account of. "

18. Thus, paragraph 17 applies an "implications" test different to that in paragraph 9. "Implications" imports a degree of judgement whereas "reasonable" excludes it. Further, in respect of "requisite funds", paragraph 17 cannot change the wording of paragraph 9 "there is a reasonable prospect of …" or rewrite "there is a reasonable prospect of" to read (as is stated in the 2019 Guidance) "[*the necessary resources are likely to] becom[e] available...*". Furthermore, because "blight" is within the scope of compulsory purchase funding, "blight" is also caught by paragraph 9, sentence one (and in turn, informs sentence two) and the timing of such funding availability for blight is also informed by paragraph 17 on particular terms: that blight funding "have been taken into account". Mr Stott's evidence shows a subsisting liability of the Applicant to blight claim by the Affected Party but that is unable to me currently satisfied (if claimed) by the Applicant. That is, a blight claim would appear to result in the immediate administration and then winding up of the Applicant limited company and, in turn, potentially remove the 'applicant' from the Application.

19. Further, the absence of evidence by the Applicant of funds at this time by which to meet its subsisting blight liability evidentially demonstrates that it cannot "have" taken into account those liabilities because no rational limited company could promote an NSIP devoid of funds to sustain its ongoing liabilities and risk going into administration during the currency of the statutory period of the determination of its Application.

20. In this context, paragraph 19 of the Guidance states the following: (emphases added)

"19. The high profile and potentially controversial nature of major infrastructure projects means that they can potentially generate significant opposition and may be subject to legal challenge. It would be helpful for applicants to be able to demonstrate that their application is firmly rooted in any relevant national policy statement. In addition, ***applicants will need to be able to demonstrate*** *that:*

- *any potential risks or impediments to implementation of the scheme have been properly managed;*

- ***they have taken account of any other physical and legal matters*** *pertaining to the application,* ***including*** *the programming of any necessary infrastructure accommodation works and* ***the need to obtain any operational and other consents*** *which may apply to the type of development for which they seek development consent."*

21. Paragraph 19 requires an Applicant (and does not burden another party so) to necessarily 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 programming of any necessary infrastructure accommodation works and the need to obtain any operational and other consents which may apply to the type of development for which they seek development consent ". The ordinary meaning of "properly" is "suitably, appropriately, completely". That paragraph is expressly encompass by paragraph 7 ("paragraphs 8-19") as a "factor" 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.

22. The context of paragraph 19 is, therefore, both funding (and absence of consents enabling funding) can qualify as risks to, and impediment to, implementation. The burden on the Applicant to evidential and legally demonstrate that there bullets 1 and 2 can be and are satisfied. The Affected Party reminds the ExA and Secretary of State that, as in *Prest* and *Sainsburys*, the Affected Party need do nothing and so it is no answer for the Applicant to assert that the Affected Party must knock down or prove against the Applicant's case.

23. Read as a whole (as the Applicant recalls), as in paragraph 7: (Emphasis added)

> *7. Applicants must therefore be prepared to justify their proposals for the compulsory acquisition of any land to the satisfaction of the Secretary of State. They will also need to be ready to defend such proposals throughout the examination of the application. Paragraphs 8-19 below 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.*

24. It is taken from the above that it is not too strong to consider that the wording 'need' is synonymous with 'must' and as such is an imperative requirement. We note that there are semantics between the two words in common parlance but within the context of the Guidance the word 'need' is used to describe requirements set out in law and as such can be seen to be used in the most ultimate form of obligation, see paragraph 21 of the Guidance which states (emphasis added):

> *"Before an application is made, applicants will* ***need*** *to comply with the pre-application requirements set out in Chapter 2 of Part 5 of the Planning Act. In particular, sections 42 and 44 require applicants to consult those with interests in relevant land. "*

25. Accepting then that the wording 'need' sets out an obligatory requirement of the highest form within the Guidance, it can be useful to review again the requirement of paragraph 19 in the alternative wording that the Applicant *must* be able to demonstrate that it has taken into account the need to obtain any operation and other consents.

26. The Applicant is not complying with these imperative obligations of the Secretary of State. In this context, the Affected Party addresses in particular paragraph 19 below.

SECTION B - APPLICANT'S INABILITY TO, AND FAILURE TO, DEMONSTRATE SATISFACTION OF PARAGRAPH 19 OF THE PLANNING ACT CPO GUIDANCE

27. In summary, assuming a 5 year period from which to exclude impediments to implementation and to address “any potential risks” thereto, as well as physical and legal matters pertaining to the Application, the following is clear.

28. It is the Affected Party's submission that the Applicant is not able to demonstrate, and has not, that it can satisfy the requirements of paragraph 19 for the following reasons.

Lack of Funding as an impediment to implementation

29. As at Deadline 8, the Applicant’s evidenced address to:
    a) Paragraph 17, is that it has no “balance sheet” funds by which to fund the project, has no cash in the bank to address “requisite funds” (at all), and is “unable” to finance the project without an exemption of a particular scope granted by a State of different jurisdiction to that in which the DCO is hoped to be granted for in England, and the Applicant hopes that someone might foot the bill for its project if asked;
    b) Paragraph 9, is that it hopes too that, because it: has no present “balance sheet” funds by which to finance “requisite funds” for compulsory purchase nor to be able to fund the project; has no cash in the bank to address “requisite funds” (at all); has not executed any agreement in front of the ExA and Secretary of State to show that there is a reasonable prospect of funds becoming available; is “unable” to finance the project without an exemption of a particular scope granted by a State of different jurisdiction to that in which the DCO is hoped to be granted for in England; and, whilst so (again) the Applicant hopes that someone might foot the bill for its compensation liabilities arising under the project at some time during the next 5 ½ years, if they’re asked to, the second part of paragraph 9 is (somehow) asserted by the Applicant to be not relevant to authorisation of the compulsory purchase despite its clear terms;
    c) Paragraph 18, is that is hopes, too, that at some date before expiry of 5 ½ years hence, miracles may happen and a person might fund a theoretical project.

30. “The scheme” with which the Application is concerned is without any funding for its implementation and execution to conclusion and is (on its own evidence) unable to proceed without the grant of exemption. The absence of funding is a relevant and important risk barring (presently) implementation. Without funding, the Applicant itself is unable to implement “the scheme” or execute it to conclusion.

31. The Application development is totally unfunded both for requisite funds and for all project funds by which to ensure its implementation, being devoid of any financial commitment by any party to that

effect, any project finance agreement, or any real world project specific finance. The highest the case is put is that the "type" of project is attractive in a (pre-Brexit; pre-Pandemic world) but there is no particular evidence in front of the Examination about the particular development to entitle the Secretary of State to be able to form a view about the risk "of the scheme" have been managed, whether properly or at all. The Applicant has asserted based on a (so-called) "KPMG Report" that the generalised market finds general "interconnector" projects attractive, but that report remains not in evidence before the Examination (and so its cited extracts cannot be lawfully relied upon for want of scrutiny by the Affected Party), and the Guidance is directed in paragraph 19 not to the general but to the "risks" "of the scheme". There is no evidence in relation to "the scheme".

The Trade and Co-Operation Agreement as a Funding Solution?

32. In front of the Examination and during its currency, the terms of, and any operable partial exemption process under the Trade and Cooperation Agreement entered into between the UK and the EU on 24 December 2020 (" **TCA ")** is not in place yet.

33. "The scheme" was, on the Applicant's prior case during Examination (and may again change back to seek such reliance), reliant on the recent domestic "TCA" provisions as (in some hoped for way) asserted as able to supply an actual alternative exemption grant. The difficulty with that approach is that the Government has ported the EU regulations on exemptions into English Law but without any modification to the TCA. Thus, because the United Kingdom departed the EU after the 30th December 2020, it cannot satisfy the definition of "Member State" in those same regulations and England also occupies a different jurisdiction from the EU today. Further, the relevant body has discontinued the Applicant's exemption request *because* the UK is no more a Member State. Furthermore, whilst the Applicant suggested to the ExA at CAH 3 that it relies on a particular regulation of that (inoperable) ported scheme to sustain an application in future, the particular exemption sought to be relied on is not the same exemption on which its Request for Exemption within the EU (under the same regulations but in the EU jurisdiction) relied on. Therefore, in itself, there is no evidence in the Examination that: the Application can be assisted (theoretically) by the TCA situation; the currently inoperable terms of the ported regulations may be changed to become operable within the English jurisdiction; some other kind of regulations may be formulated and on what particular terms; prior thereto, consultation drafts and consultation responses would fall to be undertaken and considered; and it cannot be known what the terms of English regulations (if any at all) may or may not be. Thus, it cannot be said that the risks or impediments to "the scheme" can be or have been managed, properly or otherwise. The Secretary of State is not in a position to know whether the risks of and current impediment to execution for want of an English grant of exemption can be managed and by reference to what terms. The most that can be said is that the Government is hoped to draft some kind of exemption regulations. Hope cannot demonstrably manage risks to the scheme.

34. In more detail, the scope of the “exemption” partial exemption process under the TCA entered into between the UK and the EU on 24 December 2020 is not in place. It is not possible for the ExA, or the SoS to prejudge when the process will be properly in place. It is not possible for the ExA, or the SoS to prejudge the outcome of that process based on the evidence the Applicant has submitted during the Examination. Please see our detailed written submissions in relation to this in document reference **[REP7c- 030]**. This represents a legal impediment under the terms of paragraph 19 of the Planning Act CPO Guidance.

35. The TCA partial exemption does not deliver the same benefits that the Applicant states the exemption under the EU Regulation 2019/943 would have delivered. The exemption process under the EU Regulation 2019/943 no longer applies to the Applicant due to Brexit. This represents a legal impediment to securing project finance for compulsory acquisition costs and for funding the entire project. Please see our detailed written submissions in relation to this in document reference **[REP7c- 030]**. This represents a legal impediment under the terms of paragraph 19 of the Planning Act CPO Guidance.

36. We refer to our Deadline 8 submission *'Affected Party’s Revised Version of Applicant’s Funding Statement, Rev 004*' which contains a further revised version of the Applicant's Funding Statement, and includes additional quotes from the Applicant's full Exemption Request relating to EU Regulation 2019/943.

37. These additional quotes include a statement by the Applicant that the partial exemption under the TCA is the "only" way the project can be delivered.

38. This is contrary to the statements made by the Applicant during CAH3 that the Applicant will primarily rely on the ACER litigation (discussed below) in order to secure an exemption that will in turn allow it to secure project finance.

39. This demonstrates that the Applicant itself is being inconsistent with how it intends to secure finance, which in turn begs the question: *how can this be evidence of there being a reasonable prospect" of the requisite funds becoming available when the Applicant itself is not sure or consistent with how it might be able to secure such funding*?

ACER Litigation as a funding solution?

40. Alternatively, the Applicant relies on (so-called) “ACER” litigation concerning a parallel exemption application the Applicant made before the departure of the United Kingdom from Membership of the EU. This litigation also represents a legal impediment to securing project finance for compulsory acquisition costs and for funding the entire project. It is not possible for the ExA, or the SoS to

prejudge the outcome of that process based on the evidence the Applicant has submitted during the Examination. Please see the analysis attached at **Appendix 1 to this Note**.

41. “The scheme” is exclusively reliant for funding on the grant by an EU jurisdiction body of an “exemption” under certain regulations whose scope pertains exclusively to the jurisdiction of the EU and its case law. The Applicant’s “Request for Exemption” evidences in clear terms that “without” an actual grant of that exemption, the scheme is “unable” to proceed and could not attract necessary investors and, thereby, could not be viable. Neither the Applicant nor the Secretary of State can be in a position (in the absence of evidence in front of the Examination of an exemption grant) to prejudge the outcome of litigation in a foreign jurisdiction. It could not be appropriate for him to consider paragraph 19 as satisfied by second-guessing in advance the outcome of an appeal process, notwithstanding the Applicant (understandably) has high hopes for its own appeal case. It is also impossible to say whether the outcome an appeal grant in a different jurisdiction to that of England could have any legal bearing on consideration of “the scheme” in the jurisdiction of England and within the scope of the Planning Act 2008. Further, it is understood that the non-English part of the scheme also includes discrete “commercial telecommunications” development to which EU (not English) law would apply. It remains impossible to say whether the absence of a favourable appeal decision would have any bearing on the English “scheme” for the purposes of the PA 2008 and the Secretary of State’s Guidance, paragraph 19 or whether a further application may succeed or not within 5 years. The Secretary of State is not in a position to know whether the risks of an *adverse* decision (no grant of exemption) have been properly managed nor to be able to conclude that there is no (financial or consent) impediment to implementation of “the scheme”. The most that can be said is that the Applicant hopes to succeed in its appeal in the EU and that that appeal in a different jurisdiction so as to be unable to be prejudged. Hope cannot demonstrably manage risks to the scheme.

The Insolvent Applicant

42. Please see the 'Note on the Financial Status of Aquind Limited' submitted by the Affected Party at Deadline 8 of the Examination.

43. In summary, Aquind Limited satisfies the tests under the Insolvency Act 1986 and is an insolvent company because it is not able to pay its debts.

44. That in turn means that the Applicant is at risk of being wound up as a company, because it is insolvent, and as a consequence it could also be prosecuted for wrongful trading for not doing everything it can to protect its creditors.

45. The solvency of the Applicant is relevant to consideration of this Application as section 104(2)(d) Planning Act 2008 requires the Secretary of State to consider all "important" and "relevant" matters.

46. Paragraph 18 of the Guidance also requires that the "*resource implications of a possible acquisition resulting from a blight notice have been taken account of*." Paragraph 19 requires the Applicant to demonstrate to the Secretary of State that:

    • *any potential risks or impediments to implementation of the scheme have been properly managed;*
    • *they have taken account of any other physical and legal matters pertaining to the application, including the programming of any necessary infrastructure accommodation works and the need to obtain any operational and other consents which may apply to the type of development for which they seek development consent.*

47. The solvency of Aquind Limited is specifically relevant as the Applicant has not properly taken into account all live compensation liabilities such as blight claims (which can be brought by Affected Parties now). Pleasesee Mr Stott's evidence in Appendix 8 to **[REP7C-030]** which sets out the Affected Party's subsisting entitlement to issue a blight notice.

48. Therefore, by being an insolvent company, Aquind Limited could be wound up. It does not have the cash flow or assets to meet all its current and prospective liabilities (such as blight claims).

49. The subsisting financial insolvency of the Applicant is a matter that it has not demonstrated that it can manage.

50. This represents a significant legal impediment to the grant of the DCO itself. The Affected Party submits there is no solution to this other than for the ExA and the Secretary of State to refuse the grant of the DCO and direct it pay all of the costs of the Affected Party, secured by necessary Direction against the company or those standing behind it.

Further Consents

51. The Applicant relies on the availability of an "extension" to the Lovedean Substation of National Grid for its own "connection" but the planning permission for the necessary extension to that Substation appears to have now lapsed (the Applicant instead seeking to extend the scope of its original Application development description to seek to safeguard that necessary connection point). Whilst consistency would indicate that Winchester City Council grant a duplicate grant of planning permission for that extension, there is no evidence before the Examination that the *Applicant* has itself taken any steps with that local planning authority or National Grid (to make an application) to address or manage the risk that it has no permitted current connection point to the sole English connection point for its Interconnector. Further, that development was EIA Development and it cannot be said what difference consultation on a development (in light of the authorised development) may result in and that may result in the local planning authority taking a different view (and rationally refusing consent in the exercise of its discretion). The Secretary of State is not in a

position to know whether the risks of an *adverse* decision (no grant of planning permission) have been properly managed nor to be able to conclude that there is no (consent) impediment to implementation of "the scheme". The most that can be said is that the Applicant might or might not seek further necessary planning permission but the Secretary of State could not prejudge the outcome of that local discretion. Unexpressed hope of a forthcoming consent cannot demonstrably manage risks to "the scheme".

52. The Applicant relies on compulsory purchase powers being authorised. If these are, as on the Affected Party's case, refused and as they are able to be rationally so under paragraph 16, sentence one of the 2013 Guidance, then the Applicant would be required to seek local exercise of compulsory purchase powers by a number of local planning authorities under section 226 of the Town and Country Planning Act 1990. There is no evidence before the Secretary to State to demonstrate how the risk of not securing acquisition powers under section 122 of the PA 2008 would be managed, whether properly or not. The Secretary of State could not prejudge the outcome of that local discretion.

53. "The scheme" with which paragraph 19 is concerned was applied for in the Application made originally but "the scheme" at the end of the Examination Period is very different, following numerous (unauthorised) changes and additions. There is no evidence that "the scheme" as originally made, and that includes commercial telecommunications structures would secure development consent in the next five years if it were submitted. Nor that a further iteration of the scheme as so changed and modified would be permitted. The scope of the development should properly exclude development in the extra-statutory field of commercial telecommunications and include the Protective Provisions drawn up by the Affected Party if acquisition powers were to be authorised. There is no evidence, however, that such a particular scheme (without commercial telecommunications) would be attractive to the market, the commercial telecommunications development having been included for some rational reason and similarly sought to be maintained. There is no evidence from the Applicant of its management of risk to implementation "the scheme" in such a circumstance.

Crown Estate & Ministry of Defence Letters of Consent

54. The Applicant has confirmed in its submissions during Compulsory Acquisition Hearing 3 ("**CAH3**") (and later confirmed in writing in paragraphs 3.60 to 3.70 document reference 7.9.40), that:

    54.1. it has not secured a Letter of Consent under section 135 Planning Act 2008 from the Crown Estate in relation to plot numbers 7-22, 7-24 and 10-38; and

    54.2. it has not secured a Letter of Consent under section 135 Planning Act 2008 from the Ministry of Defence consent in relation to plot numbers 6-08, 6-09, 6-14, 6-16, 6-17, 10-25, 10-26, 10-28, 10-31, 10-33, 10-34, 10-35 and 10-36.

55. The Applicant's solution is that if such Letters of Consent are not secured by the time the Secretary of State needs to decide on the grant of the DCO, compulsory acquisition powers in relation to third party interest in these plot numbers should be removed from the DCO. This accepts the potential for no such consent to be forthcoming and, in turn, reflects the position endorsed by the Affected Party in relation to its land at Little Denmead Farm. Applying the logic of the Applicant's position to the Crown also to the Affected Party, the scope of the development should properly exclude development in the extra-statutory field of commercial telecommunications and include the Protective Provisions drawn up by the Affected Party. There is no evidence, however, that such a scheme would be attractive to the market, the commercial telecommunications development having been included for some rational reason and similarly sought to be maintained.

56. What the Applicant does not explain however is that in such event, *how* it intends to deal with those third party interests as impediments to the deliverability of the scheme in due course.

57. The Planning Act CPO Guidance requires the Applicant to demonstrate its case *during* the Examination Period (paragraph 7).

58. During CAH3 the ExA asked the Applicant to produce a post-hearing note explaining how it intends to manage impediments to the scheme. However, as such a document has not yet been submitted by the Applicant, the Affected Party is not in a position to properly further scrutinise what the Applicant intends to do in relation to this particular impediment.

59. Despite this, any response by the Applicant in relation to the management of impediments needs to be considered through the lens of funding. The Applicant does not satisfy the requirement in paragraph 9 of the Planning Act CPO Guidance because there is a reasonable prospect of the requisite funds becoming available.

60. Without the requisite funds becoming available, how will the Applicant fund the private agreements that may be needed with third party interests over plot numbers 7-22, 7-24, 10-38 6-08, 6-09, 6-14, 6-16, 6-17, 10-25, 10-26, 10-28, 10-31, 10-33, 10-34, 10-35 and 10-36?

61. The Affected Party is unable to identify any submissions by the Applicant that this has been costed. On that basis, the Affected Party submits that this represents an impediment to the deliverability of the scheme.

APPENDIX 1

NOTE ON THE ACER LITIGATION IN THE CONTEXT OF THE REQUIREMENTS OF PARAGRAPH 19 OF THE PLANNING ACT CPO GUIDANCE

Date: 1 March 2021

AQUIND Interconnector application for a Development Consent Order for the 'AQUIND Interconnector' between Great Britain and France (PINS reference: EN020022)

Mr. Geoffrey Carpenter & Mr. Peter Carpenter (ID: 20025030) in relation to Little Denmead Farm

Note on the Applicant's Response to TCA, Exemption Requests & ACER Litigation

Submitted in relation to Deadline 8 of the Examination Timetable

Blake Morgan LLP
6 New Street Square
London EC4A 3DJ
www.blakemorgan.co.uk

1. Executive Summary

1.1. In August 2018 and in June 2020, the Applicant made Requests for Exemptions from then subsisting EU legislation and in respect of a particular category of exemption. The Request for Exemption documentation included evidence that, without that particular exemption being granted, the project for the Aquind Interconnector will be unable to proceed because it could not attract investors and not be financially viable. Following the departure on the 30th December 2020 by the United Kingdom from the EU and from its legal jurisdiction, the legislation underpinning the Requests for Exemptions cannot be satisfied in the EU because the United Kingdom is not in fact a Member State; and the mirror iteration of that legislation (called "Retained EU Legislation") cannot be satisfied in fact either because it also provides that the United Kingdom is a Member State of the EU when in fact it is not. That is and remains the current position in law and in fact. It follows that the Applicant's present case during the statutory Examination Period of the Planning Act 2008 can only be that, at the present time, the Aquind Interconnector is in fact unable to be financially viable and cannot proceed. That cannot be disputed in law or fact.

1.2. The Applicant's further representations to the ExA cloud this issue by obviscation and lack of particularity. However, because the Application engenders consideration of the compulsory acquisition of land that includes that of the Affected Party, the English common law requires "most careful scrutiny" of the situation (see the *Prest* case), requires the Applicant to bear exclusively the onus of demonstrating its case (including as to the content of this Note) (see *Sainsburys* [2011] 1 AC 437) and also, the protections of the common law result to require legislation that may result in acquisition being interpreted so as avoid compulsory acquisition (and not the other way around) (see *Sainsburys*). In particular, as in *Sainburys:*

> *10. In Prest v Secretary of State for Wales (1982) 81 LGR 193 , 198 Lord Denning MR said:*
>
> > *"I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised by Parliament and the public interest decisively so demands …"*
>
> *and Watkins LJ said, at pp 211–212:*
>
> > *"The taking of a person's land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised. The courts must be vigilant to see to it that that authority is not abused. It must not be used unless it is clear that the Secretary of State has allowed those rights to be violated by a decision based upon the right legal principles, adequate evidence and proper consideration of the factor which sways his mind into confirmation of the order sought."*
>
> *11. Recently, in the High Court of Australia, French CJ said in R & R Fazzolari Pty Ltd v Parramatta City Council [2009] HCA 12 , paras 40, 42, 43:*
>
> > *40. Private property rights, although subject to compulsory acquisition by statute, have long been hedged about by the common law with protections. These*

protections are not absolute but take the form of interpretative approaches where statutes are said to affect such rights."
"42. The attribution by Blackstone, of caution to the legislature in exercising its power over private property, is reflected in what has been called a presumption, in the interpretation of statutes, against an intention to interfere with vested property rights …"
"43. The terminology of 'presumption' is linked to that of 'legislative intention'. As a practical matter it means that, where a statute is capable of more than one construction, that construction will be chosen which interferes least with private property rights."

1.3. In the particular context of the Application where compulsory acquisition of land in England is envisaged, there is nothing to preclude the application of the foregoing principles of common law from biting on the legislation in the English jurisdiction. In particular, the TCA and the Retained Legislation.

1.4. The scope of the (so-called) 'exemption' in the 'Retailed Legislation' is different to, and on different terms to, that exemption within which the Applicant has applied twice to fall within. Therefore, the reliance by the Applicant on a (so-called) 'exemption' in the jurisdiction of England is legally misconceived because its terms do not equate to those within which the Applicant has previously sought to fall in its two Requests for Exemptions.

1.5. There is no evidence at this time by which the Applicant can otherwise than 'hopes' for further legislation at an unidentified legislation for exemptions (if any). However, there is no published white paper or otherwise indicating at all what (if any) legislation may or may not be provided in due course, nor when, nor when it may (or may not) come into force, nor even the terms of such legislation. Therefore, for the purposes of paragraph 19 of the "Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land (September 2013)", no party (whether the Applicant, ExA or Secretary of State or otherwise) is, or are, or can be in a position to know whether or not financial risks in relation to 'exemptions' can be managed at all, let alone properly or not. It would be an exclusively theoretical and thus irrational to consider otherwise.

1.6. Further, no party (whether the Applicant, ExA or Secretary of State or otherwise) is in a position to prejudge the outcome of decisions (here, ACER) in relation to any, in particular the EU, jurisdiction. Therefore, the expressions of view by the Applicant about the ACER process cannot be relevant. Therefore, for the purposes of paragraph 19 of the "Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land (September 2013)", neither the ExA and Secretary of State are or can be in a position to know whether or not financial risks relating to the outcome of ACER can be managed at all, let alone properly or not. It would be an exclusively theoretical and thus irrational to consider otherwise.

1.7. In more detail but still summarily, the Applicant is seeking an exemption of Regulation 19(2) and 19(3) of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5

June 2019 on the internal market for electricity (recast) (Text with EEA relevance) (Retained EU Legislation) (the **"Regulations 2019/943"**).

1.8. The exemption of Regulation 19(2) and 19(3) is imperative to secure for the Applicant because "without" the grant by the relevant authority of such an exemption the Applicant cannot operate its project in France and neither can the proposed authorised development attract the requisite investors in order to fund that project as a whole.

1.9. The Applicant has sought this exemption through *two* exemption requests.

1.10. Due to a successful appeal to the CJEU, the Applicant's *first* exemption request is scheduled to be re-heard by the Board of Appeal for the Agency for the Cooperation of Energy Regulators ("**ACER**").

1.11. The Applicant has submitted that this pending decision to be made by the Board of Appeal will be able to be taken retrospectively and in the legal fiction of a non Brexit world.

1.12. It is the position of the Affected Party that the Applicant's case for this is not absolute and is without foundation for the reasons given below.

1.13. The pre-condition to a grant of exemption assumes the logically prior establishment of jurisdictional competence of the Board of Appeal. The competence of the Board of Appeal in being able to have to have pre-requisite jurisdiction to make in fact and in law any decision to grant the Applicant an exemption remains as yet not established and is not clear.

1.14. It is not clear whether any decision by the Board of Appeal could be made, as a matter of jurisdiction, so-called '*restitutio in integrum'*, or in other words made within the legal fiction of a non-Brexit world to enable an exemption to be granted.

1.15. The *second* exemption request has been discontinued in fact and law by the United Kingdom's Office of the Gas and Electricity Markets Authority's ("**Ofgem**") and France's Commission de Régulation de l'Énergie ("**CRE**") because the pre-existing route to exemption for the Applicant's project cannot, in fact and law, operate after the date of the cessation of the United Kingdom as a Member of the EU from the 31st December 2020. Ofgem and CRE have confirmed that is the situation (in law and fact).

1.16. A presently theoretical (so-called "inherited") route to a grant of exemption lies within the Trade and Cooperation Agreement 2020 ("**TCA**"). However, whilst showing some exemptions to new interconnectors, it does not offer an exemption to the provisions on which the Applicant sought to rely upon for its exemption as set out in its Request for Exemption documentation.

1.17. The following outlines that there exists no present basis in law or fact over the sole remaining exemption request by the Applicant and that, even if the Applicant could theoretically demonstrate certainty over the outcome of future legal proceedings without prejudging the outcome of that decision maker, and which we submit it has also failed to do, there is not currently a situation where there is any evidence in front of the ExA during the Examination Period that enables the ExA or Secretary of State to rationally conclude that the Applicant would, may be likely to, or could, benefit from any exemption at all for its project.

1.18. As such, currently, the Applicant is unable, during the life of the Examination Period, to demonstrate the viability of the project as a whole on the theoretical basis that a DCO were granted and have some 5 years in which to obtain funding. The DCO is sought on an exclusively aspirational basis. The Applicant 'hopes' it may be funded, being itself devoid of both balance sheet funds and any other funds by which to fund its project. The absence of the exemption results to mean that the only rational conclusion available to the ExA and Secretary of State is that neither is in a rationally entitled position to conclude otherwise than that the project is "unable" to be funded (based on the Applicant's own evidence in its exemption request terms).

2. History of the Applications

2.1. The Applicant has, until the 29 January 2021, pursued two avenues in order to gain an exemption from Regulation 19(2) and 19(3) of the Regulations 2019/943.

2.2. The first of these was an exemption request submitted to Ofgem and CRE in August 2017 (the "**First Request**").

2.3. The First Request was referred by CRE and Ofgem to the Agency for the Cooperation of Energy Regulators ("**ACER**") under Article 17(5)(b) of 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 (the "**Regulations 714/2009**")

2.4. In June 2018, ACER published its decision refusing the Applicant's exemption request. The Applicant subsequently appealed to ACER's Board of Appeal (the "**Board of Appeal**") under Article 19 of Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (the "**Regulations 713/2009**")

2.5. The Board of Appeal rejected the Applicant's appeal in October 2018.

2.6. In the meantime, before the departure of the United Kingdom on the 31st December 2020, the Applicant on the 2 June 2020 submitted to Ofgem and CRE *another* exemption request (the "**Second Request**").

2.7. In relation to the First Request, the Applicant appealed to the Court of Justice of the European Union ("**CJEU**"). The CJEU recently published its ruling on 18 November 2020 (before departure of the United Kingdom from the EU and from its jurisdiction) that the Board of Appeal's ruling of October 2018 was annulled.

2.8. Following the departure on the 31st December 2021 of the United Kingdom from the jurisdiction of the, and Membership of, the EU, on the 29 January 2021, Ofgem and CRE discontinued the Second Request because the Regulations 2019/943 which governs exemptions could no longer apply as the UK was from the 1st January 2021 no longer a Member State of nor within the EU.

3. Purpose of the Exemption Request

3.1. During the then currency of the EU jurisdiction over the United Kingdom, the Applicant's two requests which sought exemption from Article 19(2) and (3) of the Regulations 2019/943 were sought in order to enable it to achieve greater freedoms regarding use of revenues obligations in relation to congestion management for a period of 25 years in the future.

3.2. As to the impact of the exemption request to the overall project the consultation document of Ofgem and CRE (the **"Consultation"**), reproduced at Schedule 1, was published on the 18th December 2020, The Consultation document states the following in regard to this request and its scope:

'2.22. The partial exemption would apply only to a fixed share of the project's revenues ("the Exempt Portion"). This share corresponds to the proportion of the AQUIND Interconnector's capital and operational costs incurred on French territory, including both land and French territorial waters.

2.23. AQUIND has estimated the total project costs to be €1537 million, including investment, development, operational and replacement costs. According to AQUIND, the share corresponding to the French territory is €488 million (32%).

2.24. The revenues covered by the scope of the exemption would include the fixed share of the sum of the following components:

- *Congestion revenues generated by the AQUIND Interconnector;*
- *Capacity Mechanism revenues in France and in the UK*
- *Ancillary Services revenues*
- *Netting-off components, which may include, for example, any costs that may apply to the project, such as trading tariffs, or penalties associated with non-performance of Capacity Mechanism and/or Ancillary Services contracts that the AQUIND Interconnector may enter into;*
- *Any other revenues arising from the AQUIND Interconnector performing its role'*[1]

3.3. The Consultation also noted that *'an exemption from Use of Revenue obligations under paragraphs 19(2) and (3) of the Regulation would give AQUIND the opportunity to make a financial return on the initial investment that reflects the risk of the project. This can potentially be higher than otherwise would be the case under a fully regulated regime because of the*

[1] Consultation - A Joint Consultation on AQUIND Exemption Request (Ofgem & CRE, Dec 2020) [2.22-2.24]

higher risks attached to AQUIND operating under an exemption without consumer underwriting in France.'[2]

3.4. In addition to the observations provided for in the Consultation which was taken from the Applicant's Request for Exemption, additional indication as to the purpose of the exemption request is found in the Request for Exemption itself which is reproduced at Schedule 2 to this note, the Applicant stated the following: (Emphasis added)

3.4.1. "*Without the flexibility provided by the exemptions requested in this Request for Exemption, AQUIND Interconnector will not be able to attract non-recourse debt finance or equity. Furthermore, if particularly onerous conditions are imposed as part of the exemption, the lender's margin, and therefore the cost of the project, will increase. This may make it non-viable for AQUIND to proceed. AQUIND is not in a position to finance the Project on "balance sheet" as national TSOs and utilities may be in a position to do." "*[3]

3.4.2. *"AQUIND's Request for Exemption on the Use of Revenues in France follows extensive regulatory engagement with CRE, as well as Ofgem and ACER to consider and test the viability of different investment and regulatory routes for AQUIND Interconnector. The conclusion of these regulatory tests, extensive analysis and formal regulatory decisions is that the <u>only</u> investment route available to AQUIND in France is through an exemption under Article 63. <u>Without an exemption, the project cannot, and will not, progress and the significant benefits to France, GB and Europe, as demonstrated in the AQUIND revenue and social welfare analysis (Exhibit 1) will not be realised</u>"*[4]

3.4.3. *""As discussed in Section 5 of this Request for Exemption, this investment will not take place unless this exemption is granted. AQUIND requests an exemption that is proportionate and related to the Use of Revenues in respect of the revenues generated by the Project, which corresponds to the Exempt Portion. Further AQUIND has incorporated a proposed condition into the Request for Exemption to ensure French network users benefit in scenarios where AQUIND's revenues exceed a certain threshold.*"[5]

3.5. From the above it can be objectively seen that the exemption from regulation 19(2) and 19(3) is required in order for the project to be financially viable as the Applicant needs it:

3.5.1. Firstly, to attract non-recourse debt finance or equity in order to remain viable; and

[2] Consultation - A Joint Consultation on AQUIND Exemption Request (Ofgem & CRE, Dec 2020) [2.29]
[3] Request for Exemption: Aquind Interconnector (Aquind, 2020) , para 4.5
[4] Request for Exemption: Aquind Interconnector (Aquind, 2020) , para 5.3.1
[5] Request for Exemption: Aquind Interconnector (Aquind, 2020) , para 6.1

3.5.2. Secondly, as there is no alternative route in order for the project to benefit from a regulated regime in France.

4. Dismissal of the Second Request and any recourse to the Trade and Cooperation Agreement 2020 ("TCA")

4.1. We have previously provided to the ExA our submissions on the implications of the dismissal of the Second Request by Ofgem and CRE at Deadline 7c **[REP7c-030]**.

4.2. In summary, Ofgem and CRE released on the 29th January 2021 a joint statement that said:

"In light of the new Trade and Cooperation Agreement (the "TCA") agreed between the UK and the EU on 24th December 2020, following the UK's departure from the EU, the NRAs consider that the exemption request process defined under the Regulation is only available to interconnector projects developed between EU Member States. ***As the UK is no longer a Member State and the transition period has ended, Aquind can no longer access that process and the NRAs no longer have the necessary legal powers to assess, and decide upon, the Exemption Request****.*

Consequently, the NRAs have decided to discontinue the ongoing consultation and assessment process." (Bold emphasis added)

4.3. The dismissal by Ofgem and CRE of the Second Request is a fact and is indisputable by the Applicant. It cannot be disputed by the ExA nor Secretary of State.

5. Position of the Applicant in relation to the exemption regime in the TCA

5.1. However, the Applicant has on multiple occasions tried to make reference to an assertion that the TCA now contains certain terms of an exemption regime that would, is likely to, or could solve the present absence of financial viability of the project in the absence of an actual grant of exemption to it.

5.2. The Applicant has asserted at **[REP7-038]**, that:

"The Trade and Cooperation agreements (TCA) agreed on December 24, 2020 dedicates specific attention to the cooperation between the UK and the EU on efforts to combat climate change. As part of this cooperation, the TCA established a new regulatory framework for energy infrastructure linking the member states of the European Union and the United Kingdom, including an exemption regime similar to that in Regulation 2019/943 under which AQUIND submitted the ongoing Exemption Request. Following discussions with the Energy

Regulatory Commission (CRE) and its British counterpart Ofgem, AQUIND expects that the NRAs will shortly publish a decision as to how the TCA impacts on the ongoing Exemption Request."

5.3. In addition to the above, at Issue Specific Hearing 4 ("**ISH4**") and the Compulsory Acquisition Hearing 3 ("**CAH3**") Mr Jarvis and Ms Goldburg both asserted on behalf of the Applicant to the ExA that there was a certain exemption regime (inter alia of certain terms) in fact contained in the TCA is one which the Applicant can rely on in the way which it sought exemption under Regulation 2019/943 for an actual grant of an exemption thereunder.

5.4. Mr Jarvis at ISH4 stated that "there *is an exemption request regime* in Annex ENER-3 of the TCA." This was in response to a comment by the legal representatives of Portsmouth City Council that "without an exemption [the Applicant] cannot operate in France." On sight of the transcripts of the ISH4, we note that the substantive points of this conversation occurred in between the 1:05.00 - 1:15:38 mark of the Session 6 Transcript.

5.5. In addition to Mr Jarvis' statement in ISH4, the ExA heard from Ms Silke Goldburg for the Applicant at Compulsory Acquisition Hearing 3 ("**CAH3**"). Ms Goldburg asserted that there presently exists, (inter alia, certain terms of) two pathways by which the Applicant can at this present time of the Examination Period be granted an exemption: firstly through its re-opened case in (the jurisdiction of the EU) front of ACER; and the second through the procedure for new exemptions in the TCA. Ms Goldburg expressed her view that she did not see a procedural issue in the Applicant gaining an exemption through either method. However, that view prejudged the outcome of the appeal process.

5.6. In addition to the Applicant's legal representative's contentions at ISH4 and CAH3, the Applicant has sought to clarify on their position in the form of a post hearing note entitled "Post hearing note to Compulsory Acquisition Hearing 3 in respect of the non UK Planning Consents and Approvals required" (the "**Post Hearing Note**").

5.7. The Applicant's Post Hearing Note asserts there to be a certain "exemption route under the TCA" between paragraphs 3.16 and 3.23 of their Note.

5.8. In summary, the Applicant's submissions between paragraphs 3.16 and 3.23 is that the Applicant may (it is asserted) benefit from the exemption route offered by the TCA. At 3.19 the Applicant notes that there are provisions in the TCA that set out overarching principles previously included in EU legislation governing third party rights, unbundling, and congestion management.

6. Analysis of the Applicant's position in relation to the exemption regime in the TCA

6.1. In contrast to paragraph 3.19 at paragraph 3.20 of the Post Hearing Note, the Applicant notes that the exemption regime in the TCA allows for the disapplication of the provision relating ONLY to unbundling and third party rights – crucially for this application missing out on the provision for the disapplication of provisions relating to congestion management. The Applicant here, all but confirms that ANNEX ENER-3 does not offer the Applicant a route to exemption in the form that it seeks in its Request for Exemption.

6.2. Between paragraphs 3.18 and 3.23 everything that the Applicant states is factually correct but entirely useless as to answering the question of whether the Applicant can actually benefit from the exemption regime in the TCA. There is nothing within the paragraphs 3.18-3.23 provided by the Applicant that is not adequately and succinctly dealt with in our previous submissions at Appendix 10 of REP7c-030.

6.3. In the above mentioned note **[REP7c-030]** the Affected Party concluded that, whilst the TCA does have an exemption regime within ANNEX ENER-3, this exemption regime is not of any use to the Applicant because it does not in fact include within it terms for options for exemption for those matters in the Applicant's original application to Ofgem and CRE, being exemption from Article 19(2) and 19(3) of the Regulations 2019/943.

6.4. The exemption from Article 19(2) and 19(3) (which govern the use of revenues in relation to congestion management) is one of three areas in the Regulations 2019/943 where a developer might be exempt; the others relate to:

6.4.1. the provision of third-party access to an interconnector[6]; and

6.4.2. tariffs or charging methodologies for such access.[7]

6.5. The effect of the three exemptions above would be in practice to dis-apply the mirror conditions contained in the Applicant's interconnector licence granted to them under s6(1)(e) of the Electricity Act 1989.

6.6. As evidenced by the Ofgem and CRE decision of the 28 January 2021, from the 31st December 2020 and the departure of the United Kingdom from Membership of, and the jurisdiction of, the EU, this EU regime is no longer in law or fact applicable to the Applicant. The Applicant then

[6] Article 63(4A)(a), Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) (Text with EEA relevance) (Retained EU Legislation)
[7] Regulations 2019/943, Article 63(4A)(b)

asserted that this doesn't *matter because* the Applicant is left with the exemption regime laid out in the TCA.

6.7. The TCA does contain an exemption regime at ANNEX ENER-3. But, the exemptions contained therein are not equivalent to the exemption sought by the applicant in its Request for Exemption. Therefore the scope of the exemptions referred to in the TCA cannot cover the Applicant's situation.

6.8. ANNEX ENER-3 only applies to Article ENER.8 and Article ENER.9. These articles do not *create* the equivalent positions around congestion management from which the Applicant is seeking to be exempt. The provisions around congestion management are situated within Article ENER.13.

6.9. For the Applicant to benefit from a similar regime, the TCA would have to establish and include provisions at Article ENER.10 so as to enable ANNEX ENER-3 to exempt Article ENER.13. The TCA does not, in fact or law, do this.

6.10. It is noted that Annex ENER-3 is able to be amended as necessary[8] and so, theoretically, amendments might be made in the future to exempt provisions around congestion management in the future but it remains the position that, currently, and crucially now in front of the ExA during the present Examination Period, that the requirements surrounding congestion management are not included in the exemption regime of the TCA.

6.11. The Applicant does not benefit from a long period of time between the 31st December 2020 and 8th March 2021 when the statutory examination period concludes. It is incredible to suggest that within the remaining time (and from Deadline 8 also) within the current remaining Examination Period, that such terms of relevant exemptions and amendments might be written, consulted upon, and implemented. Even if, which is not the case here, the Applicant had a surplus of time in which to wait for an amendment to the TCA the Applicant would be unable to tell the ExA *when* such amendment terms might come about. This is because it is currently unclear *when*, and *what* change to the terms (if any) will be made to the TCA and there is presently no published information on when future amendments regarding the exemption regime will be made.

6.12. As such we would respectively refer the ExA to our submissions at Deadline 7c, where our full note on this topic can be found at Annex 10 of **[REP7c-030]** and which concludes:

6.13. As it stands, it is not clear whether or when substantive arrangements might be created and agreed which might govern the provisions around congestion management in interconnectors,

[8] TCA, Article ENER.31

currently there is no mechanism for the exemption of any such provisions – and even if there were to be such agreements at some point in the future no party can say with any certainty what the terms of those agreements might say. It stands to reason that whilst the TCA does implement an exemption regime similar to that of the Regulations 2019/943, it does not implement a regime that the Applicant can in any way *currently* benefit from in relation to its goals from its previous submission (exemption from Article 19(2) and 19(3) of the Regulation) and in addition – it is not clear when any benefit for the Applicant might make itself manifest.

6.14. The Applicant's assertion, at 3.17, that the Applicant "may avail itself of the exemption route offered by the TCA" is, it appears to the Affected Party, misleading of the ExA and Secretary of State – because although the Applicant might theoretically be able to use such an exemption route, on the basis of the scope of its Request for Exemption documentation evidence, the exemption route provided for in the TCA does not and cannot suit the Applicant's purposes of obtaining an exemption of the congestion management provisions by which to ensure the financial viability of the project and without which particular exemption the project is unable to attract investors.

6.15. The Applicant, in its Post Hearing Note, has also not provided to the ExA in unequivocal terms that it would be able to achieve an exemption under the TCA which would be the financial equivalent to that of the exemption it would have been granted by Ofgem and CRE.

6.16. The Affected Party notes, to the ExA, and in order to assist them in this area, whilst we understand that it would not have been the legal representatives for the Applicant's intention to deliberately mislead the panel; without further amplification of what was said on its behalf, there would be a risk of the Applicant doing just that.

7. Applicant's case for reliance on the First Request

7.1. After providing our submissions at **[REP7c-030]** as indicated above, the Applicant appears to have changed the tack of its case (implicitly accepting the force of the case against it from the Affected Party) and asserted changed further asserted justification submissions to the ExA at CAH3 that it was not relying on the TCA nor on the Second Request for its exemption but instead was instead relying on its First Request which is to be re-heard in front of the Board of Appeal after the CJEU's annulment of the board's decision in November 2020 within the jurisdiction of the EU (and not in the jurisdiction of the UK at all).

7.2. It had been suggested to the Applicant and to their legal representatives by Portsmouth City Council that it seemed unlikely to the extreme that any decision subsequent to the UK leaving the EU on the 31st December 2020 could result in applying the Regulations 2019/493 in a way that you create the UK to be, as a matter of legal fiction, for the purpose of those Regulations, a notional Member State somehow within the EU notwithstanding the departure of the United Kingdom from the EU after the 31st December 2020. Indeed, the Affected Party would characterise the Applicant's approach as the law of "Alice in Wonderland" or, "Humpty Dumpty".

7.3. Nevertheless, the Applicant asserts to the ExA in its Post Hearing Note that there is, in its view, some kind of rational basis for relying on the First Request as:

7.3.1. Outside of the jurisdiction of the United Kingdom and within the jurisdiction of the EU, it is the duty of ACER, in relation to its request for exemption and hypothetically assuming (without prejudgment of that body) that its appeal is allowed, to place the Applicant in the position that it would be in if the annulled act had not been adopted in accordance with Article 266 TFEU and the EU jurisdiction principle of *restitutio in integrum;*

7.3.2. As such the competence of the Board of Appeal to decide the appeal derives from Regulation 714/2009 (which the Applicant asserts is in some way held in Regulation 2019/943);

7.3.3. The date on which the exemption will apply will be from the date of the exemption request;

7.3.4. The competence of the Board of Appeal is 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."

7.3.5. Relying then that the exemption would be granted and treated as existing since 2017, Article ENER.11 of the TCA would then protect the exemption as it applies to "energy projects *currently* benefitting from an exemption".

7.4. Within England, there is an equitable principle known as "*restitutio in integrum"*. It is a principle of equity, not of law. In England, equity follows the law and not the other way around.

8. Analysis of the Applicant's case for reliance on the First Request

Appeal Process

8.1. In the Post Hearing Note the Applicant explained to the ExA the process on an appeal within the EU through ACER at paragraphs 3.3 to 3.7.

8.2. Whilst the provision of the method of appeal is noted, it cannot assist the Applicant in establishing any legal or factual basis on which they might rationally be able to claim that they will benefit from the exemption. It would still remain to be decided – regardless of any existing framework of appeal – in the exercise of its own discretion by the Board of Appeal and whether the Board of Appeal has competence to make any decision.

8.3. In fact, the Applicant's submissions at paragraph 3.3 to 3.7 of the Post Hearing Note proves the point that there are in fact and law multiple procedural hoops through which the Applicant must jump before *it may* be granted an exemption. All of these point to the fact that the ExA and Secretary of State are not in a position, on the evidence in front of it during the Examination Period, to find that the Applicant in law and fact has, might have, would have, could have or is even likely to have a grant of an exemption on which it can rely. It could be no more than mere theoretical crystal ball gazing to consider otherwise.

Scope of Article 266

8.4. Before the departure of the United Kingdom from the EU, when the Applicant applied to the CJEU to challenge the Board of Appeal's decision to refuse it its First Request, which the Applicant required for the implementation of the Aquind Interconnector, it applied under Article 263 of the Treaty on European Union and the Treaty on the Functioning of the European Union ("**TFEU**").

8.5. A successful application under Article 263 TFEU could, if successfully secured, see a successful action for annulment. A declaration of annulment will have an *erga omnes* and *ex tunc* effect, in other words – the Board of Appeal decision will be treated as if it never existed.[9] But, Article 263 and 264 TFEU do not expressly say at any point that one must wind back the clocks without regard to macro-political events, here, so as to in some magical way recreate the Membership of the EU in respect of the United Kingdom following its departure after the 31st December 2020. That would be a legally untenable, absurd, situation and is not credible. The United Kingdom has in fact departed from the EU and cannot be re-created as a Member on the basis of unspoken terms of an EU Article. If that were to have been the case, no doubt

[9] Article 264, TFEU

Civil Servants would have ensured that Membership could not be recreated by the back-door in Brexit.

8.6. The Applicant has stated that the duty of ACER to place the Applicant in the position that it would be in if the annulled act had not been adopted was based in Article 266 TFEU. It is thus important to consider the scope of Article 266 and whether or not it has sufficient scope to create a legal fiction of a non-Brexit world.

8.7. Article 266 TFEU states:

"The institution whose act has been declared void or whose failure to act has been declared contrary to the Treaties shall be required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union."

8.8. The wording of Article 266 assumes the Treaties and the jurisdiction of the CJEU. Article 266 is clearly broad but equally it is not explicit. It does not establish an express duty to put the Applicant in the position it would have been had the Board of Appeal decision not been taken – rather infers only that the Board of Appeal must honour the decision of the CJEU that the original decision of the Board of Appeal be annulled. The decision then to re-hear the issue is a logical consequence of the acceptance of the annulment and as such the Board of Appeal must re-hear the issue.

8.9. Article 266 offers no terms nor clarification as to whether the Board of Appeal must hear the issue in the legal framework of 2018 – together with an “Alice in Wonderland” pre-departure world with the United Kingdom in some way treated as a (then) existing Member State when in fact it is not (then) an actual Member State – and, as such, offers no clarity as to whether or not the Board of Appeal has the competence to make any decision to grant the Applicant an exemption.

Restitutio in integrum

8.10. The Applicant then brings up the EU law principle of *restitutio in integrum* and how the interrelation of Article 266 and this principle further clarify that the Board of Appeal must hear the matter in a 'non-Brexit world' being in the framework of 2018.

8.11. We hope that the Applicant provides more information on their interpretation of this legal principle as it is our position that the principle of *restitutio in integrum* exists primarily in the

consideration of damages.[10] It also exists in the separate common law of jurisdiction of England as a principle of equity. In this jurisdiction, however, equity follows the law.

8.12. There does exist a wider principle of *restitutio in integrum* in EU patent law – but we consider this outside the scope of ACER's decision as it would apply as an option to an applicant under patent law who has failed to meet a time limit.

8.13. *Restitutio in integrum* can be firmly acknowledged in the context of EU patent law as it exists in two articles of law. It is written in at Article 104 Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark; and Article 67 Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs.

8.14. We have been unable to find any such mention of *restitutio in integrum* in relation to the operation of ACER and Regulations 2019/943, Regulations 713/2009, and Regulations 714/2009.

8.15. As such it remains for the Applicant to establish the relevance of the principle of *restitutio in integrum* to the upcoming decision of the Board of Appeal.

8.16. By our understanding, the use of the EU legal principle of *restitutio in integrum* as a justification of the anticipated success of the ACER decision would mischaracterise this legal principle and act, potentially, as a misrepresentation of the legal position of the Applicant. If the Applicant would provide with precise location the basis on which ACER is legally competent to make a decision *restitutio in integrum* that might provide greater clarity on this point.

8.17. In addition, further to the above, *restitutio in integrum*, in so far as it applies to the English principle of Equity, does not apply without limit and also follows the law. There are circumstances where *resitutio in integrum* is impossible, and as such a court would only have to go so far as practically possible.[11]

Importance of restitutio in integrum

8.18. The Applicant has to establish the EU principle of *restitutio in integrum* also. This is because without it any consideration that the Board of Appeal does make in the future will be applied

[10] See *Mulder v Council [2000] ECR I-203 at [63]* ff; Ruffert *(2001) 38 CML Rev 781*; also van Gerven (1994) 1 Maastricht Jo Eur & Comp Law 6, 31. AND *Damages: The Law of Damages (Common Law Series)* "H Wrongs committed by EU institutions" [Chapter 28, 28.77]

[11] Halsbury's Laws of England > Mistake (Volume 77 (2016)) > 3. Remedies > (1) Relief in Cases of Mistake > (i) Kinds of Relief Available and when Available > 39. Where restitutio in integrum impossible. https://www.lexisnexis.com/uk/legal/results/enhdocview.do?docLinkInd=true&ersKey=23_T151130244&format=GNBFULL&startDocNo=0&resultsUrlKey=0_T151130255&backKey=20_T151130256&csi=274661&docNo=4 [date accessed 24.02.21]

against the current legal landscape of Brexit. We can see that in Regulations 714/2009 and the adopted instrument Regulation 2019/943.

8.19. The Applicant points the ExA to these regulations at paragraph 3.8 of their Post Hearing Note. The wording of Article 17 Regulations 714/2009 and its mirror article, Article 63 Regulations 2019/943 provide for interconnectors between member states and relationships between member states. But, in the real world, the UK is not in fact a Member State. And it is clearly this issue that Ofgem and CRE addressed in their decision notice of 29 January 2021 because real world facts have real legal consequences – in that situation, the discontinuance of the Applicant's application process *because* of the departure of the United Kingdom from the jurisdiction and Membership of the EU.

8.20. As such, without the EU principle of *restitutio in integrum,* it does not seem that the Board of Appeal would be able to apply the regulations to the Applicant as the UK is not a member state.

8.21. In addition, we would also question how the Board of Appeal could use a EU instrument and apply it in the UK generally post Brexit which would be required if they were to interpret and rely on Regulations 714/2009?

8.22. We would also question how the Board of Appeal could use a UK instrument and apply it in the UK generally whilst being an EU body which would be required if they were to interpret and rely on Regulations 2019/943?

Competence confirmed in the Withdrawal Agreement

8.23. Turning to paragraph 3.12 of the Applicant's Post Hearing Note. The Applicant seeks to now demonstrate that the Board of Appeal would have competence to continue to make decisions post Brexit due to the wording of Article 92 of the Withdrawal Agreement. This is untenable.

8.24. Article 92 of the Withdrawal Agreement states:

The 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:

(a) compliance with Union law by the United Kingdom, or by natural or legal persons residing or established in the United Kingdom; or

(b) compliance with Union law relating to competition in the United Kingdom. "

8.25. Again, despite the Applicant asserting otherwise, it is far from clear as to whether Article 92 applies in this case. It would seem crucial to the Applicant to making clear in their Post Hearing Note that the Board of Appeal decision would consist of an *administrative procedure*.

8.26. We have been unable to find *any* legal commentary regarding the interpretation and scope of *administrative procedure* that would confirm the Applicant's position and in the Hansard debates there is nothing recorded that might offer insight as to the intended scope of this wording by Parliament. The absence of any commentary indicates the untenable position of the Applicant's assertions.

8.27. What we have been able to find is explicit reference to Article 92 of the Withdrawal Agreement in other areas. For example there is guidance from the Competition and Markets Authority regarding Article 92 they have said that 'EU institutions bodies, offices and agencies will continue to be competent for certain administrative procedures (including merger, antitrust or cartel cases) initiated before the end of the Transition Period.' [12]

8.28. In addition, a briefing report on the legal position of Theresa May's withdrawal agreement which contained identical provisions at Article 92 states that *'where there are arrangements to provide for the winding down of administrative procedures (such as regulatory procedures concerning competition rules or state aid)…which are ongoing at the end of the implementation period will continue to a final decision'*[13]

8.29. In *neither* of the two examples above is *any* 'administrative procedures' relating to ACER either explicitly stated or implied.

8.30. Further, it is noted that for any administrative procedure to come *within* Article 92, it would be required that those administrative procedures are either to do with compliance with Union law by the United Kingdom, or by natural or legal persons residing or established in the United Kingdom; *or* compliance with Union law relating to competition in the United Kingdom.

8.31. We cannot see how *any* decision by Board of Appeal could come within these requirements.

---

[12] Guidance on the functions of the CMA after the end of the Transition Period (CMA, 2 October 2020, CMA125) [6] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940943/Guidance_Document_for_End_of_Transition_Period_--.pdf [date accessed 24.02.21]

[13] EU Exit Legal Position on the Withdrawal Agreement (Attorney General, December 2018) Cm9747 [14] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/761153/EU_Exit_-_Legal_position_on_the_Withdrawal_Agreement.pdf [date accessed 24.02.21]

8.32. Taking the first of the two requirements – the Board of Appeal's decision is not related to compliance with Union law *by* the Applicant. The Applicant's *compliance* with Union law is not in question. Instead, the scope of the Board of Appeals decision is in relation to the *application* of Union law *to* the Applicant. As such we cannot see how a prospective Board of Appeal's decision would come within this first requirement.

8.33. Secondly, the Board of Appeal's decision has nothing to do with compliance with Union law relating to competition *in the United Kingdom* and so cannot satisfy this requirement either.

8.34. As such, it is far from clear that Article 92 could offer any use to the Applicant and its appeal to the Board of Appeal in offering any clarity as to the competence of the Board of Appeal to make a decision in the first place.

8.35. We note that by the end of March 2021[14], the EU will provide the UK with a list of all the ongoing administrative procedures, and so it might be that clarity can be gained then as to whether this appeal in front of the Board of Appeal is an administrative procedure within Article 92. Unfortunately, this falls outside the examination timetable.

Impact of Article ENER.11 TCA

8.36. The Applicant's final point is that, as it asserts, *provided* that the Board of Appeal has the competence to make a decision, and *provided* that it makes that decision retrospectively, and *provided* that it makes its decision in favour of the Applicant – this would (it is asserted) continue to apply through to today as Article ENER.11 of the TCA states that exemptions granted to interconnections between the Union and the UK will extend beyond the transition period.

8.37. We note this novel point from the Applicant and also that it relies on all the above contingencies crystallising at some point in the future (if at all), that the Board of Appeal actually have competence to make a decision and that it is able to make that decision *restitutio in integrum* at all.

Relevance of the First Request

8.38. Even if, theoretically, the Applicant were to show in law and fact to the ExA that the Board of Appeal was in some way capable of making the decision that the Applicant seeks – it still remains that before the ExA in this Examination Period the Applicant is unable to demonstrate that they benefit from the means to enable this project to be financially viable.

[14] List provided by 3 months from the end of the transition period, see Article 92(4) Withdrawal Agreement.

8.39. It would rely on the ExA making an (unlawful) theoretical assumption as to the outcome of future litigation of the Applicant over the exemption and not taking a decision as to the realities in front of it during the examination itself: there is no exemption granted; there is no procedure to enable it to do so; and it cannot be said that there would be or is likely to be such a procedure at this point in time nor what the terms of that procedure may be.

8.40. Therefore, the Affected Party notes that, regardless of theoretical suggestions advanced by the Applicant over the First Request and it's possible chances of success – the ExA nor the Secretary of State is not in a position at this time to pre-judge the future litigation of the Applicant and so cannot see the ongoing litigation of the First Request as being suitable evidence as to the viability of the project as a whole.

8.41. The Affected Party has set out above why the Applicant's position remains unclear and unknown and is untenable when it comes to consideration of whether theoretically it may be granted an exemption. That:

8.41.1. Firstly, the Applicant's Second Request was discontinued because both CRE and Ofgem considered that the existing legal framework could no longer applied to the Applicant.

8.41.2. Secondly, that the TCA offers no (so-called) equivalent regime to that which the Applicant was seeking in its exemption requests evidenced in its Request for Exemption;

8.41.3. Thirdly, that the First Request is now without legal or factual foundation and it is far from clear what, if any, legal or factual route the Board of Appeal might be able to take in this regard.

9. Implications of the lack of exemption to the requirement of the Applicant to have requisite funds

9.1. Our submission around this point remains the same – that without the exemptions the Applicant would be able to demonstrate that it has requisite funds. Please see our submissions at **[REP7c-030]** for further on this.

10. Implications of the lack of exemption in light of Planning Act 2008 Guidance

Obligations contained in the Guidance

10.1. Paragraph 19 of the Guidance states the following: (emphases added)

"The high profile and potentially controversial nature of major infrastructure projects means that they can potentially generate significant opposition and may be subject to legal challenge. It would be helpful for applicants to be able to demonstrate that their application is firmly rooted in any relevant national policy statement. In addition, ***applicants will need to be able to demonstrate*** *that:*

- *any potential risks or impediments to implementation of the scheme have been properly managed;*
- ***they have taken account of any other physical and legal matters*** *pertaining to the application,* ***including*** *the programming of any necessary infrastructure accommodation works and* ***the need to obtain any operational and other consents*** *which may apply to the type of development for which they seek development consent."*

10.2. It is taken from the above that it is not too strong to consider that the wording 'need' is synonymous with 'must' and as such is an imperative guidance requirement. We note that there are semantics between the two words in common parlance but within the context of the Guidance the word 'need' is used to describe requirements set out in law and as such can be seen to be used in the most ultimate form of obligation, see paragraph 21 of the Guidance which states (emphasis added): *"Before an application is made, applicants will* ***need*** *to comply with the pre-application requirements set out in Chapter 2 of Part 5 of the Planning Act. In particular, sections 42 and 44 require applicants to consult those with interests in relevant land."*

10.3. Accepting then that the wording 'need' sets out an obligatory requirement of the highest form within the Guidance, it can be useful to review again the requirement of paragraph 19 in the alternative wording that the Applicant *must* be able to demonstrate that it has taken into account the need to obtain any operation and other consents.

10.4. The Applicant has not and cannot comply with this imperative obligation and is not in a position to be able to show that it cannot be said that there is no risk of (financial) impediment to implementation. Its own case for its Request for Exemption stated unambiguously that

"without" an exemption the project was "unable" to proceed. The legal framework for securing that exemption collapsed when the United Kingdom departed from the EU after the 31st December 2020 and the "retained" EU Regulations in England include that the United Kingdom is a Member State when it is not. Those Regulations remain inoperable and there is no evidence that they may be changed to become operable at any time in the future.

Applicant's failure to adhere to the Guidance

10.5. The Applicant has submitted that it is not able to progress with the project if it does not gain an exemption under Articles 19(2) and 19(3) of the Regulation. This is due to the exemption being required for two fundamental parts of the project, firstly that it is the required regulatory basis for the project in France, and that secondly it is necessary to amass the required funding to progress the project as a whole.

10.6. Both before and after the 31st December 2020, the Applicant has failed to obtain an exemption under these articles and it remains untenable that it could demonstrate that it has obtained exemption in the remaining days of this examination.

10.7. The Applicant submitted in its exemption request to Ofgem and CRE that '*without an exemption, the project cannot, and will not, progress'*[15] as after *'extensive regulatory engagement with CRE, and well as Ofgem and ACER to consider and test the viability of different investment and regulatory routes for Aquind interconnector. The conclusion of these regulatory tests, extensive analysis and formal regulatory decisions is that the only investment route available to Aquind in France is through an exemption under Article 63*.'[16] At Section 6 of the request for exemption, the Applicant states 'Aquind has thereby conclusively demonstrated that the partial exemption requested in this Request for Exemption is the only route that will allow the development of Aquind Interconnector to take place.'[17]

10.8. This statement sets out in no uncertain terms the entire viability of this application is, or rather was, dependent on the Applicant being granted an exemption. Neither is the above the exhaustive list of submissions by the Applicant throughout its exemption request that stress the importance of the exemption to the project.

10.9. In the UK regulatory context, with a mind to the requirement set out in s122 of the Act on which paragraph 9 of the Guidance states that *'the applicant should be able to demonstrate that there is reasonable prospect of the requisite funds for the acquisition becoming available. Otherwise, it will be difficult to show conclusively that the compulsory acquisition of land meets*

[15] Request for Exemption: Aquind Interconnector (Aquind, 2020) Section 5 [4]
[16] ibid.
[17] Request for Exemption: Aquind Interconnector (Aquind, 2020) Section 6, para 6.3.1 [8]

the two conditions in section 122.' The Applicant was required to obtain this exemption within the timeframe provided for under the DCO examination process. If the Applicant is unable to show and satisfy the ExA that it has been granted an exemption by the close of the examination, then we would respectively submit that the ExA cannot grant compulsory acquisition powers under this DCO.

10.10. The Applicant has all but confirmed that it cannot satisfy the requirement to demonstrate reasonable prospect of requisite funds. At paragraph 4.5.1 of Section 4 of the Applicant's exemption request the Applicant states that *'Without the flexibility provided by the exemptions requested in this Request for Exemption, AQUIND Interconnector will not be able to attract non-recourse debt finance or equity. Furthermore, if particularly onerous conditions are imposed as part of the exemption, the lender's margin, and therefore the cost of the project, will increase. This may make it non-viable for AQUIND to proceed."*

10.11. The above contains within it a level of ambiguity over whether the non-viability of the project is in relation to the total non-grant of the exemption or the grant of the exemption with onerous conditions. Regardless, it could reasonably be inferred that if onerous conditions may make the project un-viable the non-grant of the exemption would surely make the project demonstratively unviable from a funding angle.

10.12. This inference is a reasonable speculation and is supported by another of the Applicant's statements. Taking the first sentence laid out above, that *'Without the flexibility provided by the exemptions requested in this Request for Exemption, AQUIND Interconnector will not be able to attract non-recourse debt finance or equity'* the Applicant states on page 14, of Section 4 of their Request for Exemption that *'Aquind will seek further equity funding and non-recourse project financing from wider pools of potential investors for the construction stage of the Project. The target combination of debt and equity will be determined through the ongoing discussions around the most efficient investment approach with potential investors while the exemption is assessed, but in any case project debt is unlikely to be less than 50%*.'

10.13. It is reasonable to assume that the Applicant then *had* relied on the exemption to attract over 50% of the financing for this project and that removal of the legal and factual availability has in reality removed any prospect of funds being available to the Applicant for the project.

10.14. The above seems to be particularly poignant when looking at the potential financial impacts of Brexit over the project where a CRE study in 2017[18], which sought to estimate the

[18] Etude de la valeur des interconnexions entre la France et la Grande-Bretagne: https://www.cre.fr/content/download/17041/209395 in Consultation - A Joint Consultation on AQUIND Exemption Request (Ofgem & CRE, Dec 2020) [3.44]

potential consequences of Brexit on the relevance of any new interconnector project between France and the UK found that Brexit could result in the value of a new interconnector decreasing by 10% to 30%. Where under a "soft" Brexit, a 10% reduction would be found, and under a "hard" Brexit with a 'decoupling of the British electricity markets from those of its neighbours, in parallel to additional investments in the UK to be able to independently guarantee security of supply, leading to a 30% reduction of benefits.'[19] This is in comparison to Aquind's estimate of the impacts of Brexit being 5%[20].

10.15. As such from the above, it can be demonstrated that the Applicant cannot satisfy those mandatory requirements set out by paragraph 19 of the Guidance as it is unable to demonstrate that it has appropriately managed risks to implementation as the Applicant has failed to take account and obtain the necessary consents to enable the implementation of the scheme.

11. Conclusion

11.1. The Affected Party provides the ExA with clarification as to our position in relation to the two exemption requests sought by the Applicant as the Applicant's case shifts and changes.

11.2. It is also hoped that the above has demonstrated, where appropriate, issues with the Applicant's submissions which the ExA might like further clarification on.

11.3. Overall, it is our position that the Applicant cannot stand before the ExA before the end of this examination period and say otherwise than untenably that it benefits from an exemption, and that any exemption is ensured to come in the future. The Applicant's contentions are irrational and without evidential or legal foundation when subjected to scrutiny.

11.4. This lack of certainty over the exemptions means that the Applicant is unable to show that there is a reasonable prospect of requisite funds and neither can the Applicant show that they have dealt with potential impediments to the scheme- or that it could be financially viable without the type and scope of the exemption it originally sought whilst the United Kingdom was a Member of the EU.

[19] Consultation - A Joint Consultation on AQUIND Exemption Request (Ofgem & CRE, Dec 2020) [3.78]
[20] ibid [3.109]

Schedule 1

Consultation Document of Ofgem and CRE following the Applicant's Request for Exemption

ofgem
Making a positive difference for energy consumers

COMMISSION DE RÉGULATION DE L'ÉNERGIE

Consultation

A Joint Consultation on AQUIND's Exemption Request

Publication date:	18/12/2020	**Contact at Ofgem:**	Riccardo Rosselli (Ofgem) 020 7901 9927 riccardo.rosselli@ofgem.gov.uk
Response deadline:	29/01/2021	**Contact at CRE:**	Maël Demortier (CRE) +33 1 44 50 89 12 mael.demortier@cre.fr

This document outlines the scope, purpose and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses. We want to be transparent in our consultations. We will publish the non-confidential responses we receive on our websites at **Ofgem.gov.uk/consultations** and **cre.fr**. If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response.

Contents

Executive summary

Article 63 of Regulation (EU) 2019/943 (“Article 63”,”the Regulation”) permits National Regulatory Authorities for Energy (“NRAs”) to, in agreement with any other relevant concerned NRAs, and subject to the approval of the European Commission (“the EC”), exempt new investments in cross border electricity interconnectors from some aspects of the Regulation provided certain conditions are fulfilled.

AQUIND Limited and AQUIND SAS ("AQUIND") propose to build, own and operate a new 2000MW electricity interconnector between Great Britain (GB) and France (“the AQUIND Interconnector”). It is currently seeking a partial exemption for the AQUIND Interconnector from Articles 19(2) and 19(3) of the Regulation regarding Use of Revenues obligations in France.

This joint consultation by Ofgem and the CRE sets out the conditions, defined by Article 63, that AQUIND must satisfy in order for an exemption to be granted. The document also outlines the evidence provided by AQUIND in its application in support of its view that it should be granted a partial exemption for the AQUIND Interconnector. It also seeks views from interested parties as to whether they consider AQUIND has met the exemption conditions. Moreover, additional information on AQUIND’s economic analysis that CRE and Ofgem will take into account in their assessment has been included in the consultation document.

This document marks the start of a six-week consultation. Responses would be particularly welcome to the specific questions that are set out in the appropriate sections of each chapter although we welcome respondents’ views on any aspect of this document and the exemption request.

Responses should be received by 29 January 2021.

The NRAs will base any final decision they make on their analysis of the issues and responses to this joint consultation.

1. Introduction

A joint consultation by Ofgem and CRE

1.1. This is a joint consultation by Ofgem and CRE on a request from AQUIND for an exemption, for the AQUIND Interconnector, from aspects of European legislation under Article 63 of the Regulation (EU) 2019/943.

1.2. AQUIND proposes to build, own and operate a new 2000MW electricity interconnector between GB and France. The AQUIND Interconnector is being promoted by AQUIND SAS (France) and AQUIND Limited (UK).

1.3. Electricity interconnectors are the physical links that allow the transfer of electricity across borders. They allow electricity to be generated in one market and used in another. The proposed 240km interconnector will connect the transmission systems in GB at Lovedean substation, and in France at Barnabos substation.

1.4. AQUIND is seeking a partial exemption for the AQUIND Interconnector in France from Articles 19(2) and 19(3) of Regulation 2019/943 regarding Use of Revenues obligations for a period of 25 years from the start of commercial operations. This partial exemption would apply to a fixed share of the revenues earned by the AQUIND Interconnector that corresponds to the portion of the AQUIND Interconnector's capital and operational costs related to French territory (onshore and French territorial waters).

1.5. The proposed scope, duration and rationale for AQUIND's exemption request is described in more detail in Section 2 of this document.

1.6. Pursuant to Article 63, paragraph 4 of the Regulation, the decision on whether to grant an exemption must be agreed by the NRAs of the Member States concerned.

1.7. The concerned NRA in GB is the Gas and Electricity Markets Authority ("the Authority"), whose administrative functions are carried out by the Office of Gas and Electricity Markets ("Ofgem"). The concerned NRA in France is the Commission de Régulation de l'Énergie ("CRE") (together "the NRAs").

1.8. The NRAs will assess AQUIND's exemption request against the fulfilment of six conditions listed in Article 63. Additional conditions may be imposed on the AQUIND

Interconnector if deemed appropriate by the NRAs to ensure the fulfilment of the exemption conditions throughout the exemption period.

1.9. This joint consultation seeks views from interested parties on AQUIND's request for exemption. Feedback will help to inform the NRAs' decision on whether all the conditions are fulfilled, whether the exemption request should be granted and whether any additional conditions should be imposed.

1.10. The consultation period is six weeks in order to allow enough time for stakeholders to respond to this consultation over the Christmas holiday period.

Procedure for granting an exemption

1.11. Article 63 permits NRAs to exempt new electricity interconnectors connecting their respective electricity markets from some aspects of the Regulation provided certain conditions are fulfilled.

1.12. These conditions are listed in paragraph 1.22 and are broadly aimed at ensuring the exemption is not detrimental to competition, security of supply, efficient functioning of electricity systems and markets and development of the single European electricity market.

1.13. Article 63, paragraph 4 of the Regulation requires the NRAs to reach an agreement on whether the exemption should be granted and, as the case may be, on the extent of such an exemption, within six months from the date on which the last of those regulatory authorities received the exemption request.

1.14. The exemption request was received on 29 May 2020 by Ofgem and on 2 June 2020 by CRE. AQUIND also provided additional elements by email to CRE on 16 June 2020 and on 1 July 2020, and to Ofgem on 24 June 2020 and on 1 July 2020.

1.15. Pursuant to Article 63, paragraph 7 of the Regulation, Ofgem and CRE sent a copy of AQUIND's request to the Agency for the Co-operation of Energy Regulators (ACER) on 2 June 2020 and 3 June 2020, respectively. Ofgem also sent a copy of AQUIND's request to the EC on 2 June 2020, on behalf of both regulators.

1.16. On 31 July 2020, the NRAs formally acknowledged receipt of the exemption request, indicating that additional information was required from AQUIND to ensure that the exemption application included all required information and to assist the NRAs in reaching a

final decision. The NRAs indicated that without the information requested, AQUIND's exemption request could not be considered complete.

1.17. AQUIND provided the additional information required on 28 August 2020 and on 9 September 2020.[1]

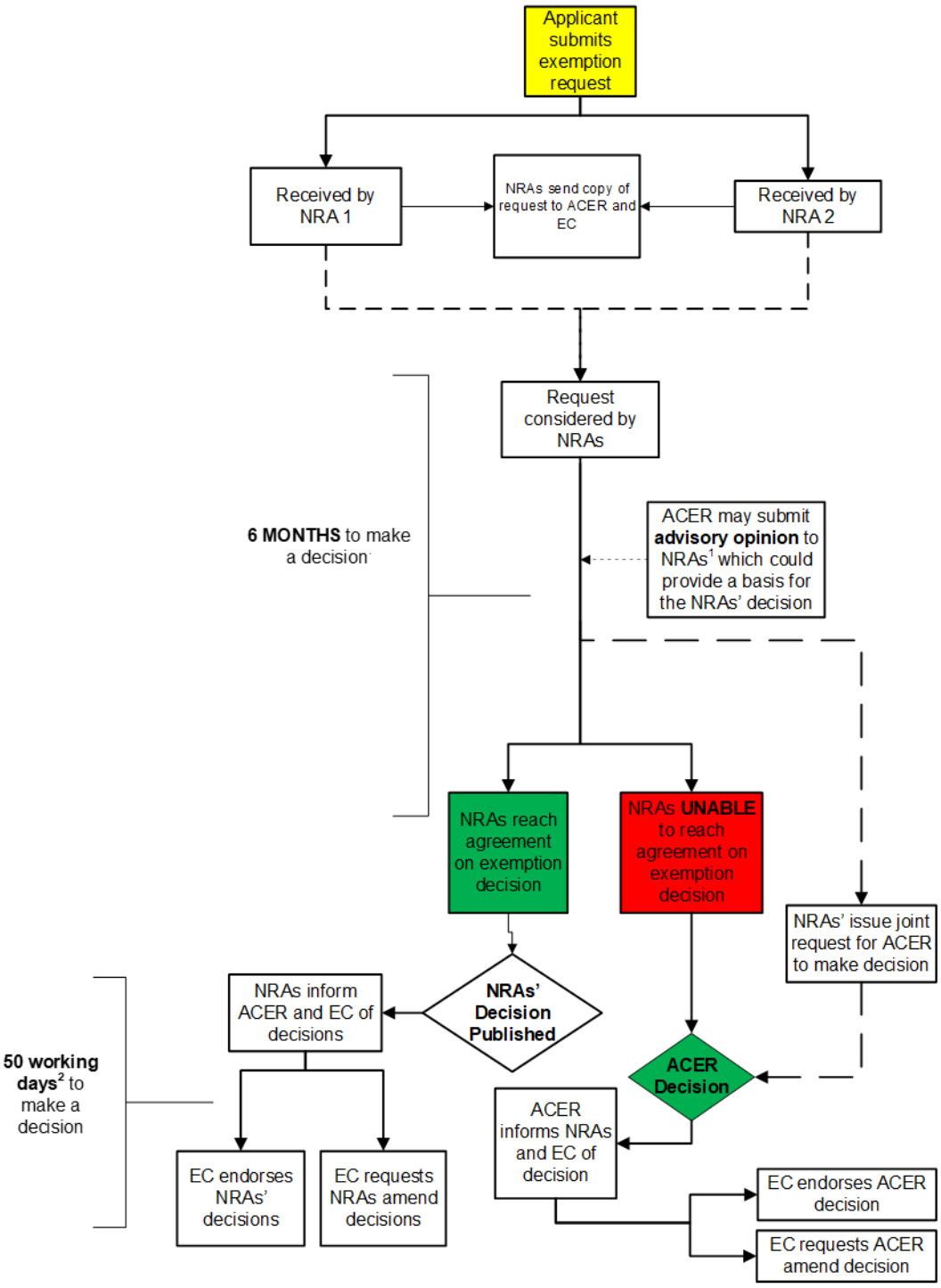
1.18. The decision on the exemption request will be taken by ACER if the NRAs cannot reach an agreement within six months or upon an earlier joint request from the NRAs.

1.19. Following the NRAs' decision,[2] the EC may, within 50 working days of receiving the notification of their decision from the NRAs, require the NRAs to amend or withdraw the decision to grant an exemption.[3] This period may be extended by a further 50 working days if additional information is requested by the EC. The NRAs note that, as described in paragraphs 1.44 to 1.47, the UK exit from the EU could affect the procedures mentioned above.

1.20. This decision-making process is illustrated in Figure 1 below.

[1] For further context, see Article 63, paragraph 5 of the Regulation.
[2] Or a decision taken by ACER where the NRAs are unable to reach a decision or a joint request has been made by the NRAs that ACER make the decision under paragraph 5(a) or 5(b) of Article 63 of the Regulation.
[3] Article 63, paragraph 8 of the Regulation.

Figure 1 - Process for considering exemption requests pursuant to Article 63 of Regulation (EC) 2009/943



1. Within 2 months from date of receipt by the last NRA concerned
2. This 2 month period may be extended by a further 2 months where further information is sought by EC

1.21. Article 63 provides that new interconnectors may, upon request, be exempted for a limited period of time from some or all of the following provisions in European legislation:

- Article 19(2) and (3) of the Regulation, governing how revenue resulting from the allocation of interconnector capacity may be used;
- Articles 6 and Article 43 of Directive (EU) 2019/944 ("the Directive"), concerning, respectively, Third Party Access (TPA) and ownership unbundling requirements; and
- Article 59(7) and Article 60(1) of the Directive, concerning regulatory approval of charging methodologies.

1.22. Paragraphs 1(a) to (f) of Article 63 specify the six conditions below that must be met for an exemption to be granted:

a) the investment must enhance competition in electricity supply;

b) the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted;

c) the interconnector must be owned by a natural or legal person which is separate, at least in terms of its legal form, from the system operators in whose systems that interconnector is to be built;

d) charges will be levied on users of that interconnector;

e) since the partial market opening referred to in Article 19 of Directive 96/92/EC of the European Parliament and of the Council, [4] no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector; and

f) the exemption is not to the detriment of competition or the effective functioning of the internal market for electricity, or the efficient functioning of the regulated system to which the interconnector is linked.

[4] Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity (OJ L 27, 30.1.1997, p. 20)

Legal framework in GB

1.23. There are two routes for electricity interconnector investment in GB. Developers may choose to follow the regulated route and apply for the cap and floor regime[5] or follow the exempt route and request an exemption from certain aspects of the legislation of the European Union (EU).

1.24. Under the cap and floor regime, interconnector developers can submit project proposals to Ofgem during pre-defined periods, or application windows.

1.25. This approach allows for the consideration of interactions between projects and enables Ofgem to make a decision on whether all, some or none of the projects are likely to be in the interests of GB consumers.

1.26. Ofgem opened the first cap and floor application window between August and September 2014,[6] and a second application window between March and October 2016.[7]

1.27. In August 2020, Ofgem launched a review of the cap and floor regime[8] to establish whether there is a need for further GB interconnection capacity beyond those projects currently with regulatory approval. If so, the secondary objective of the review is to consider Ofgem's approach to the regulation of future GB interconnection.

1.28. Depending on the outcomes of this review, Ofgem may decide to open a third application window under the current cap and floor regime arrangements, or develop new arrangements for project developers seeking a regulated regime in GB.

[5] For more information, please visit: https://www.ofgem.gov.uk/ofgem-publications/87848/regulationfutureinterconnectioncapandfloorpdf
[6] Decision to roll out a cap and floor regime to near-term electricity interconnectors: https://www.ofgem.gov.uk/sites/default/files/docs/2014/08/decision_cap_and_floor_near_term_electricity_interconnectors.pdf
[7] Decision to open a second cap and floor application windows for electricity interconnectors in 2016: https://www.ofgem.gov.uk/sites/default/files/docs/decision_to_open_a_second_cap_and_floor_application_window_for_electricity_interconnectors_in_2016.pdf
[8] Open letter: Notification to interested stakeholders of our interconnector policy review: https://www.ofgem.gov.uk/publications-and-updates/open-letter-notification-interested-stakeholders-our-interconnector-policy-review

1.29. The Authority[9] can grant licences to electricity interconnector developers and operators under the Electricity Act 1989 ("the Act"). The Authority granted an interconnector licence to AQUIND Limited on 9 September 2016.[10]

1.30. Under Article 63 of the Regulation, developers of new interconnectors can request to be exempted from some provisions of the Regulation. As described in paragraph 1.7, Ofgem is the relevant NRA for GB. As such, Ofgem is responsible for assessing and deciding on any such exemption request, together with any other concerned NRAs. The NRAs' decision is subject to the approval of the EC.

1.31. In GB, any decision to grant an exemption under Article 63 needs to be given effect in the relevant electricity interconnector licence through an exemption order under standard licence condition (SLC) 12.

1.32. Section 5A of the Utilities Act 2000 requires that before implementing an important proposal, the Authority is required to carry out and publish an assessment of the likely impact of implementing the proposal or publish a statement setting out reasons for thinking that it is unnecessary to carry out such an assessment.

1.33. Ofgem considers that the decision on this exemption meets the technical definition of an important proposal as set out in Section 5A. Therefore, in accordance with the requirements of Section 5A (3) (b) of the Act, Ofgem has carried out an impact assessment (IA) to inform a joint decision on the exemption request. This IA will be published alongside the publication of this document on Ofgem's website.[11]

1.34. Ofgem notes that this exemption, if granted, will determine the regulatory arrangements in France only.

1.35. Therefore, AQUIND will still need to secure a regulatory solution in GB before the project can be built. As such, the impacts of the AQUIND Interconnector considered in this

[9] The terms "the Authority", "Ofgem" and "GEMA" are used interchangeably in this document. The Authority is the Gas and Electricity Markets Authority. Ofgem is the Office of the Gas and Electricity Markets Authority. Ofgem's governing body is the Gas and Electricity Markets Authority and is referred to variously as GEMA or the Authority. The role of the Authority is to oversee Ofgem's work and provide strategic direction.
[10] For more information, please visit: https://www.ofgem.gov.uk/publications-and-updates/aquind-limited-notice-grant-electricity-interconnector-licence
[11] Ofgem website: https://www.ofgem.gov.uk/electricity/transmission-networks/electricity-interconnectors

document and in the IA will not immediately materialise in GB even if both NRAs agree to grant an exemption.

1.36. Ofgem will have the opportunity to assess fully the impacts of AQUIND in GB when the project developers seek regulatory approval in GB. Consequently, the analysis presented in the IA is largely qualitative and based on the work produced by AQUIND to support the exemption request.

Legal Framework: France

1.37. French legislation does not provide a specific regime for the development, construction and operation of interconnectors by private investors. Private investors can construct and operate an interconnector within the context of an exemption, as provided for in Article 63, or under the regulated regime provided for in Article 12 of Regulation (EU) No 347/2013 for interconnectors projects that are granted with the Project of Common Interest (PIC) status.

1.38. In France, CRE is in charge of deciding, in agreement with the relevant concerned NRA, whether to grant an exemption for new interconnectors.

Overview of current and planned GB – France interconnection

1.39. Currently, the only existing interconnector capacity between France and GB is the IFA interconnector, which is a 2000MW high voltage direct current (HVDC) link between the French and GB transmission systems commissioned in 1986. It is owned and operated by National Grid Interconnectors Limited ("NG") and Réseau de Transport d'Electricité ("RTE"), the French Transmission System Operator ("TSO").

1.40. Two interconnector projects between GB and France have received regulatory approval and are currently under construction:

- ElecLink is a 1000MW project that is being developed by GetLink under the exempt route. This project has been granted Project of Common Interest ("PCI") status and was awarded a partial exemption from compliance with certain aspects of European regulation by Ofgem and CRE in 2014.[12] The project is currently planned to be commissioned in 2021.

[12] Final decision on ElecLink Limited's request for an exemption under Article 17 of Regulation (EC) 714/2009**:** https://www.ofgem.gov.uk/publications-and-updates/final-decision-eleclink-limited%E2%80%99s-request-exemption-under-article-17-regulation-ec-7142009-great-britain-france-

- IFA2 is a regulated 1000MW project owned by NG and RTE. IFA2 was approved under the cap and floor regime by Ofgem in July 2015 and through RTE's investment framework by CRE in January 2017. The project is currently undergoing technical testing and is expected to enter commercial operation at the end of 2020.

1.41. In addition to the AQUIND Interconnector, two other interconnector projects are also proposed on the French - GB border:

- FAB Link is a proposed regulated 1400MW project owned by FAB Link Limited and RTE. This project has been granted PCI status and was granted a cap and floor regime in principle, in Window 1 of Ofgem's cap and floor regime in July 2015.

- GridLink is a proposed 1400MW project owned by iCON Infrastructure Partners lll, LLP. It is one of the three projects which were granted a cap and floor regime in principle in Ofgem's second cap and floor application.

1.42. The two projects under construction described in paragraph 1.40 will increase the total interconnection capacity between France and GB to 4GW. If both the proposed projects with GB regulatory approval described in paragraph 1.41 are built, France-GB capacity will increase to 6800MW. If the AQUIND Interconnector is also completed, it will further increase the total capacity to 8800MW.

1.43. NRAs will consider the above projects in their assessment of AQUIND's exemption application.

EU Exit

1.44. On 23 June 2016, the UK held a referendum on the membership of the EU, and the outcome of the vote was for the UK to leave the EU. On 31 January 2020, the UK officially left the EU, starting a transition period which will end on 31 December 2020, after which EU legislation will cease to apply in UK.

1.45. EU Exit has raised questions about some aspects of the regulatory regime that will underpin interconnectors connecting GB to France and continental Europe, in particular the legal basis on which future regulatory and trading arrangements will be based.

electricity-interconnector

1.46. Therefore, the future status of this exemption decision and of the trading arrangements underpinning interconnectors' activity will potentially be subject to future agreements between the UK and EU and/or between the UK and France.

1.47. NRAs will consider AQUIND's analysis including the possible future partnership arrangements between the UK and the EU and/or between the UK and France and assess potential consequences of the UK's departure from the EU, and the end of the transition period, on the exemption decision.

Structure of the document and next steps

1.48. The remainder of this document is structured as follows:

- Chapter 2 provides an overview of the AQUIND Interconnector project, and the proposed scope, duration and rationale for exemption presented by AQUIND.

- Chapter 3 provides an overview of AQUIND's Cost Benefit Analysis (CBA) supporting the exemption request.

- Chapter 4 summarises the other evidence presented by AQUIND in its submission and AQUIND's views on how its exemption request meets criteria (a) to (f). It also provides a preliminary analysis of the request by the NRAs.

1.49. The NRAs invite views from interested parties on AQUIND's request for exemption and the extent to which they consider the exemption conditions have been met. The NRAs would also welcome views on potential options for ensuring that the scope and duration of any exemption is proportionate and, as far as possible, consistent with the aims of the internal electricity market. The deadline for interested stakeholders to provide their views is 29 January 2021.

1.50. Ofgem and CRE will need to approve individually that all the conditions for the exemption are met in GB and France respectively. However, in line with the intention of the Regulation and as demonstrated by this joint consultation, the NRAs will coordinate their assessment of the exemption request.

1.51. Based on the NRAs' analysis of the issues and responses to this joint consultation, they may decide to:

- Grant the partial exemption: the scope and duration of exemption being as requested by AQUIND;

- Grant the partial exemption with extra conditions and/or modifications regarding the scope and duration of the exemption: where AQUIND is granted an exemption for a different scope or a different duration than AQUIND's request;

- Refuse the exemption request; or

- Refer the decision to ACER if the NRAs do not reach agreement on the most appropriate decision to take.

How to respond

1.52. We want to hear from anyone interested in this consultation. Please send your response to the relevant person on this document's front page, or enter it directly in CRE's online platform (consultations.cre.fr).

1.53. We have asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.

1.54. We will publish non-confidential responses on our website at www.ofgem.gov.uk/consultations and consultations.cre.fr.

Related publications

Regulation (Eu) 2019/943 Of The European Parliament And Of The Council

ACER decision no 05/2018 on the exemption request for the AQUIND interconnector June 2018

Communication of the French Energy Regulatory Commission of 29 March 2012 on the application of Article 17 of Regulation (EC) No 714/2009 of 13 July 2009 July 2009

Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in Electricity May 2009

Deliberation of the Energy Regulatory Commission of 16 November 2017 establishing guidelines for new interconnector projects with the United Kingdom and deciding to transfer the exemption request submitted by AQUIND Ltd. to ACER November 2017

Deliberation by the French Energy Regulatory Commission of 11 July 2019 informing on the estimation of the optimal electricity interconnection capacity and the new interconnection projects with the United Kingdom July 2019

2. AQUIND's exemption application

Section summary

This chapter presents an overview of the AQUIND Interconnector project and the information submitted to the NRAs by AQUIND in support of its exemption request. It includes AQUIND's rationale for requesting an exemption, the scope of the exemption request along with proposals for the allocation of the interconnector capacity, unbundling arrangements and a proposed profit-sharing mechanism.

Overview of the AQUIND Interconnector project

2.1. Table 1 below provides an overview of the AQUIND Interconnector.

Table 1 - Overview of the AQUIND Interconnector

Project	Aquind Interconnector
Developer	AQUIND Limited
Capacity	2 GW (2000 MW)
Length	~ 240 km (182 km submarine, ~ 56 km land)
Connection points	Lovedean substation (England) – Barnabos substation (France)
Planned commissioning date	2024

2.2. AQUIND states that, subject to the exemption being granted, it is due to start construction works in 2022 and operations in Q2 2024.

Overview of Aquind's previous applications

2.3. AQUIND submitted its first exemption request in August 2017 under Article 17 of Regulation (EC) No 714/2009.

2.4. AQUIND requested a partial exemption for a period of 25 years from use of revenues, unbundling and third party access requirements under Regulation (EC) No 714/2009 Directive 2009/72/EC.

2.5. Ofgem and CRE began their assessment of AQUIND's exemption request in autumn 2017. However, following the 2016 referendum on the exit of the UK from the EU, CRE issued its Deliberation No 2017-253 in November 2017 establishing guidelines for new interconnector projects with the UK. In light of this deliberation, CRE and Ofgem jointly decided to refer the exemption request to ACER.[13]

2.6. In November and December 2017, ACER received formal notifications by CRE and by Ofgem, respectively, referring the exemption request to ACER for decision, pursuant to Article 17(5) of Regulation (EC) No 714/2009.

2.7. In June 2018, ACER published its decision[14] not to grant to AQUIND a partial exemption. ACER concluded that the condition set out in Article 17(1)(b) of the Electricity Regulation was not met, finding that AQUIND had not sufficiently demonstrated that the level of risk attached to the investment was such that the investment would not take place unless an exemption was granted.

2.8. In particular, ACER indicated that AQUIND, despite having obtained PCI status for the AQUIND Interconnector in April 2018, did not test whether a regulated regime was available to the AQUIND Interconnector under the Cross-Border Cost Allocation process (CBCA) described in Article 12 of Regulation (EU) No 347/2013 (″the TEN-E Regulation″).[15]

2.9. ACER noted that a decision taken under Article 12 of the TEN-E Regulation could have resulted in the allocation of costs for the AQUIND Interconnector and in the recovery of such costs through a regulated regime, addressing some of the key risks AQUIND presented in its 2017 exemption request.

2.10. AQUIND appealed to the Board of Appeal of ACER against ACER's decision to reject the exemption request, but the appeal was rejected in October 2018. An appeal to the Court of Justice of the European Union (CJEU) was submitted in December 2018. The CJEU published

[13] For additional information, please visit: https://www.cre.fr/en/Documents/Deliberations/Orientation/interconnector-projects-with-the-united-kingdom

[14] ACER decision no 05/2018 on the exemption request for the AQUIND interconnector : https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Individual%20decisions/ACER%20Decision%2005-2018%20on%20AQUIND.pdf

[15] Projects of common interest (PCIs) are key cross border infrastructure projects that link the energy systems of EU countries and are expected to deliver significant EU-wide benefits. The CBCA process aims, in part, at facilitating the development of these key projects whose costs and benefits are unevenly distributed among affected states. Only projects awarded with the PCI status can access the CBCA process.

its ruling on 18 November 2020 and it can be found on the CJEU website.[16] The effect of the ruling is that the decision of ACER's Board of Appeal has been annulled.

2.11. The NRAs note that AQUIND was not included in the fourth Union list of Projects of Common Interest published on 11 March.[17]

Information provided by AQUIND in its exemption request

2.12. AQUIND's current exemption request consists of the main exemption application and the relevant supporting exhibits. The main document sets out AQUIND's rationale for the exemption request and how it considers the relevant exemption conditions have been met. The exhibits include the necessary supporting analysis and other relevant documents.

2.13. The list of all the exhibits is provided in Table 2 below.

Table 2 - Contents of AQUIND's exemption request

Exhibit No.	Name
Exhibit 1	AQUIND Revenue and social welfare analysis
Exhibit 2	AQUIND Competition analysis
Exhibit 3	AQUIND Financial model and sensitivities data files
Exhibit 4	AQUIND revenues and social welfare analysis data file
Exhibit 5	The connection and use of system code bilateral connection agreement with National Grid Electricity Transmission plc
Exhibit 6	UK Connection & Infrastructure Option Note
Exhibit 7	Proposition Technique et Financière with RTE Réseau de Transport d'Electricité
Exhibit 7A	Proposition Technique et Financière with RTE Réseau de Transport d'Electricité – Conditions Particulières
Exhibit 8	Technical feasibility opinion
Exhibit 9	Summary of project consents and licences
Exhibit 10	Report on the impact of AQUIND on the French transmission system
Exhibit 11	Programme plan and programme risks
Exhibit 12	Summary of connection agreements
Exhibit 13	Summary of local taxation in France
Exhibit 14	Technical report on variation of grid losses and security of supply

[16] CJEU ruling: http://curia.europa.eu/juris/document/document.jsf?text=&docid=233873&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=13720333
[17] Fourth Union List of Projects of Common Interest: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0389&from=en

2.14. The NRAs have published the non-confidential elements of these exhibits alongside this consultation document to inform responses from interested parties.

2.15. AQUIND also provided additional details on the analytical approach followed to model scarcity rent,[18] as well as additional information on the impacts of the AQUIND Interconnector on network costs and losses in France. AQUIND also submitted an economic study on the role of electricity interconnectors in the economic recovery post-COVID.

2.16. On 31 July 2020, the NRAs requested additional information to assist the NRAs in assessing AQUIND's exemption request.

2.17. More specifically, NRAs requested information in relation to condition (b) of Article 63, paragraph 1, regarding the allocation of the expected costs and benefits of the project between France and GB; and in relations to condition (f) of Article 63, paragraph 1, regarding the financial aspects of the projects.

2.18. These are summarised in Table 3 below.

Table 3 - Additional information requested by the NRAs

Relevant condition	Description
Condition (b)	• Details underlying the allocation retained by AQUIND of the costs categories between France and GB. • Rationale of the choice of a ratio based on the cost repartition of the project. • Analysis of the impact of this allocation on the exemption criteria
Condition (f)	• Justification of the discount rate for the project. • Duration of the exemption, including an analysis of its impact on the project profitability. • Residual value of assets at the end of the exemption period. • Threshold above which profits could be shared or the sharing ratio, including an analysis of its impact on French network users.
Other information	• Foreseen regime after the expiration of the requested exemption period. • Data communication procedures. • Impact of the non-fully firm connection agreement in GB and the potential impact of the capacity calculation methodology in the Channel Region on the project CBA. • Estimated revenues AQUIND could earn from participation in the French Capacity Market. • Detailed summary of the differences in the assumptions between AQUIND's own modelling and ENTSO-E's scenarios.

[18] Scarcity rents represents the uplift in the value of wholesale power relative to the system Short-Run Marginal Cost (SRMC) to reflect the demand and supply fundamentals in the wholesale power market.

	• Rationale and supporting analysis backing the choice of 2 GW as optimal capacity for the project.

2.19. AQUIND satisfied the NRAs' request by providing the information described above on 28 August and 9 September 2020.

Scope and duration of AQUIND's exemption request

2.20. AQUIND requests a partial exemption for the the AQUIND interconnector in France from Article 19(2) and (3) of the Regulation regarding Use of Revenues obligations for a period of 25 years from the start of commercial operations.

2.21. AQUIND does not seek an exemption from Unbundling (Article 43, Directive 2019/944), Third Party Access (Article 6, Directive 2019/944) or the approval of charging and access rules (Article 59(7) and 60(1) of Directive 2019/944).

2.22. The partial exemption would apply only to a fixed share of the project's revenues ("the Exempt Portion"). This share corresponds to the proportion of the AQUIND Interconnector's capital and operational costs incurred on French territory, including both land and French territorial waters.

2.23. AQUIND has estimated the total project costs to be €1537 million, including investment, development, operational and replacement costs. According to AQUIND, the share corresponding to the French territory is €488 million (32%).

2.24. The revenues covered by the scope of the exemption would include the fixed share of the sum of the following components:

- Congestion revenues generated by the AQUIND Interconnector;
- Capacity Mechanism revenues in France and in the UK;
- Ancillary Services revenues;
- Netting-off components, which may include, for example, any costs that may apply to the project, such as trading tariffs, or penalties associated with non-performance of Capacity Mechanism and/or Ancillary Services contracts that the AQUIND Interconnector may enter into;

- Any other revenues arising from the AQUIND Interconnector performing its role.

Rationale for exemption presented by AQUIND

2.25. As mentioned in paragraph 1.37, French legislation does not provide a specific regime for the development, construction and operation of interconnectors by private investors.

2.26. An exemption granted under the Regulation would therefore also have the effect of permitting AQUIND to build and operate the AQUIND Interconnector in France. Ofgem notes that AQUIND will still need to obtain regulatory approval in GB before the project can be built.

2.27. AQUIND indicates that an exemption under Article 63 is the only investment route available to the developers. AQUIND therefore argues that without an exemption the project cannot progress in France.

2.28. AQUIND considers that the scope of the partial exemption is proportionate and limited to only those elements of the legislation that would otherwise prevent the development of the AQUIND Interconnector in France.

2.29. An exemption from Use of Revenue obligations under paragraphs 19(2) and (3) of the Regulation would give AQUIND the opportunity to make a financial return on the initial investment that reflects the risk of the project. This can potentially be higher than otherwise would be the case under a fully regulated regime because of the higher risks attached to AQUIND operating under an exemption without consumer underwriting in France.

2.30. Should the interconnector be more profitable than expected at the time of making the investment decision, AQUIND proposes to share additional returns generated from activities described at paragraph 2.24 with consumers via a profit sharing mechanism. This profit sharing mechanism is further discussed in Section 4 of this document.

3. Project Cost Benefit Analysis (CBA)

Section summary

This section summarises the methodology and results of the CBA submitted by AQUIND to support this exemption request. It also provides the initial review of the NRAs.

Questions

Question 1: Do you have any comments on the methodology adopted by AQUIND to estimate the SEW ?

Question 2: Do you have any comments on the assumptions taken by AQUIND regarding commodity prices, capacity mixes, demand or interconnection capacities?

Question 3: Do you have any comment on AQUIND's estimation of grid losses? Do you have any comments on the differences between AQUIND's and ENTSOE's estimation of these costs?

Question 4: Do you have any comment in regards to AQUIND's estimation of SoS? Do you have any comments on the differences between AQUIND's and ENTSOE's estimation of SoS?

AQUIND's methodology

3.1. AQUIND proceeds in two steps in order to estimate the different benefits that the project can deliver. At first, they replicate the ENTSO-E modelling for the Ten-year Network Development Plan ("TYNDP") 2018, including the three main TYNDP scenarios – Sustainable Transition (ST), Distributed Generation (DG) and EUCO covering spot years 2030 and 2040 (except for EUCO for which is only modelled for 2030).

3.2. While the modelling of the TYNDP scenarios intends to serve as a validation exercise of the CBA modelling for the exemption application, the second step consists in the development of a more detailed set of assumptions (project-specific CBA). These represent AQUIND's

central view of how European power markets are expected to evolve in the future, referred to as the Market Scenario.

3.3. In addition to this scenario, AQUIND's consultants have developed two alternative scenarios, referred to as the High Commodities/Renewables Scenario and the Low Commodities Scenario, which show alternative evolutions of future commodity prices and levels of investment in renewable generation.

Socio-economic welfare (SEW) calculations

3.4. A project-specific CBA methodology is used to calculate the impact of the AQUIND Interconnector on the power system. The CBA considers market price projections "with" and "without" the AQUIND Interconnector. The difference between these modelling outcomes reveals the impact of the Project on wholesale electricity market prices in each country.

3.5. The pan-European economic dispatch model used by AQUIND's consultants to estimate SEW impacts includes all markets to which GB may be connected, as well as countries connected to these markets. Electricity demand is represented as projected hourly profiles (derived from historic calibration). Market dispatch is then simulated with system-level constraints (e.g. cross-border capacities) optimised to deliver the least-cost solution.

3.6. In order to derive wholesale electricity prices from System Short-Run Marginal Costs (SRMC), AQUIND's consultants use an 'uplift' function in the modelling. The wholesale power prices are estimated as the sum of the SRMC and a scarcity uplift representing the capacity margin of the market: if the available generation is close to peak demand, generators are likely to bid above their SRMC, so the uplift is high.

3.7. The opposite applies in periods of high generation availability. For example, the scarcity uplift modelled by AQUIND's consultants for the year 2030 in the GB market reaches 4.2 €/MWh in average going from 800 €/MWh during hours of low capacity margin to -10 €/MWh during the hours of high capacity margin.[19]

3.8. The total net SEW impact of the AQUIND Interconnector is the sum of the change to consumer welfare, producer welfare and interconnector welfare, which are described later in this document and in Table 4.

[19] In the modelling, the scarcity below 0 €/MWh occurs 38% of the time, between 0 and 5 €/MWh 51% of the time, between 5 and 10 €/MWh 5% of the time, above 10 €/MWh 6% of the time.

Grid losses

3.9. In order to quantify the variation of grid losses due to the AQUIND Interconnector, a grid model has been developed by AQUIND's consultants.

3.10. Based on this model, an hourly direct current load flow with and without the new interconnection is run over a year. The difference of total grid losses between the two cases corresponds to the yearly variation of grid losses due to the interconnection considered.

3.11. This model differs from the model used for the SEW calculation. It covers only France, GB, Germany, Belgium and the Netherlands as AQUIND's consultants consider that they are the most likely to influence the internal dispatch of France and GB. Additionally, these countries are modelled as a single equivalent node.

3.12. AQUIND's first analysis uses the ENTSO-E methodology to estimate the variation in grid losses due to the AQUIND Interconnector. Then, AQUIND presents an analysis of the grid losses that avoids double counting with the SEW estimations, in line with the amendments made in the project version of the third ENTSO-E CBA Guideline.

3.13. Finally, a post-processing step is added to better align the estimation of grid losses to the estimation of the SEW. As the annual flow across the GB-France border in the SEW estimation is lower than the annual flow in the losses estimation, AQUIND has lowered the variation of the grid losses by the same ratio.

Security of supply (SoS)

3.14. Following the ENTSO-E methodology, AQUIND's consultants have estimated the decrease of Expected Energy Non Served (EENS) permitted by the AQUIND Interconnector.

3.15. To do so, they have adapted the portfolio of generation so that it meets the generation adequacy standards. This EENS is then monetised using the same Value of Lost Load (VOLL) than ENTSO-E (10 000 €/MWh). This value is a standard value used for calculation at European level, which does not necessarily reflect national VOLL.

3.16. Finally, a sanity check is performed to cap the value computed by EENS savings, by establishing a counterfactual. This cap represents the value of the generation capacity that would have been necessary to reach an equivalent level of adequacy (compared with the addition of the project).

3.17. The model developed by AQUIND's consultants includes the same countries as the grid losses methodology: France, GB, Germany, Belgium and the Netherlands. No exchanges are allowed between the countries included and not included in the model. The same post-processing step mentioned above is performed to align the estimation of security of supply to the estimation of the SEW.

Description of AQUIND's scenarios

3.18. AQUIND's overall assessment of the SEW benefit of the project is based on three scenarios with different assumptions for oil, gas and carbon prices, demand and generation mix. These scenarios are modelled to show a range of market outcomes. The scenarios are "Market scenario", "High commodities/renewables scenario", and "Low commodities scenario".

3.19. The Market scenario is AQUIND's central view on the evolution of the GB, France and other European power markets. Under this scenario, governments' energy policy is driven by the goals of simultaneously reaching security of supply, competitive market structure and environmental sustainability.

3.20. The High commodities/renewables scenario is instead characterised by higher renewable investment, driven by high commodity prices and economic growth across Europe. This trend in turns drives price volatility in GB, France and continental Europe leading to increased levels of interconnector investment compared to the Market Scenario. Finally, the Low commodities scenario models lower economic growth, demand and commodity prices compared to the AQUIND Market Scenario. Here, low commodity prices, based on observed prices over the last 5 years, result in lower renewable investment.

3.21. Low commodity prices also reduce the running cost of thermal generation with higher capacity margins reducing scarcity, inducing downward pressure on wholesale prices across Europe. Low price volatility and cross-border spreads reduce the incomes for interconnectors, therefore reducing interconnector investment

AQUIND's CBA results

3.22. According to AQUIND's modelling, the savings in production costs, which include the benefits of reducing greenhouse gas emissions at CO2 market price and increased integration of cheaper renewable energies, are the main benefits brought about by the project. AQUIND also quantifies an expected reduction of CO2 emissions of 2.78 MtCO2 under its market scenario.

3.23. AQUIND's analysis also indicate that, in GB, the wholesale electricity prices on average decline as a result of the AQUIND Interconnector. In France, a key benefit of AQUIND is the ability to export additional electricity. In addition, both countries could benefit from a stronger security of supply, as their generation resources may contribute to meeting the other country's demand, particularly at times of system stress.

Table 4 - SEW estimation excluding costs (€m NPV)[20]

	Category	SEW
GB	Producer welfare	-2,136
	Consumer welfare	2,275
	Other interconnectors (excluding Aquind)	-1,088
	Social welfare	-949
France	Producer welfare	4,418
	Consumer welfare	-2,092
	Other interconnectors (excluding AQUIND)	-1,392
	Social welfare	934
Rest of Europe	Producer welfare	2,506
	Consumer welfare	-1,040
	Other interconnectors (excluding AQUIND)	-1,064
	Social welfare	403
Total SEW	Social welfare (excluding AQUIND)	387

3.24. AQUIND aggregates the costs and benefits over the 25 years following the commissioning of the project (in 2024). The cost-benefit analysis is carried out at the European level, although it is possible to distinguish the net benefit or cost for each country.

3.25. In the hosting countries, AQUIND's CBA results indicate that the AQUIND Interconnector delivers high benefits in France at €933m, and a cost in GB at -€949m. The interconnector is mainly used for exports from France to GB, leading to a net positive welfare

[20] For all tables in this document, due to rounding the figures in the table may not add up precisely to the totals indicated.

for GB consumers and French producers. In other European countries, the total net social welfare is positive and estimated at €403m.

3.26. A more detailed breakdown of AQUIND's CBA results, including values for security of supply and network losses, can be found in Appendix 1 of this document.

Preliminary analysis of AQUIND's methodology

Analysis of AQUIND's methodology to compute SEW

3.27. Regulation (EU) No 347/2013[21] requires ENTSO-E to establish a methodology to assess the costs and benefits for the European community for all projects included in the TYNDP.

3.28. The methodology now in force was approved in September 2018 by the European Commission (CBA 2.0 methodology).[22] The third version of the ENTSO-E Guideline[23] was submitted to ACER, which issued an opinion on the document on the 6th May 2020.[24] After consideration of ACER opinion, ENTSO-E will submit the draft CBA Guideline 3.0 to the EC for approval.

3.29. The cost-benefit analysis performed by AQUIND considers the three monetised indicators from the CBA 2.0 methodology – SEW, grid losses and adequacy –, as well as capital costs ("CAPEX") and operational costs ("OPEX"). Regarding the SEW specifically, the methodology differs from the TYNDP 2018 on several aspects:

- New scenarios are designed based on contemporary data and real life asset investment decisions simulated by AQUIND.
- Some assumptions are made when data was not publicly available (technology costs, interconnector loss factors, detailed storage parameters).
- The model includes a scarcity uplift.

[21] Regulation (EU) No 347/2013: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013R0347
[22] Second ETNSO-E guideline for CBA: https://eepublicdownloads.azureedge.net/clean-documents/tyndp-documents/Cost%20Benefit%20Analysis/2018-10-11-tyndp-cba-20.pdf
[23] Third ETNSO-E guideline for CBA: https://eepublicdownloads.entsoe.eu/clean-documents/tyndp-documents/Cost%20Benefit%20Analysis/200128_3rd_CBA_Guideline_Draft.pdf
[24] Opinion No 03/2020 from ACER: https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2003-2020%20on%20ENTSO-E%20Guideline%20for%20cost%20benefit%20analysis.pdf

- The model includes a breakdown of flexible versus inflexible demand (to meet an annual demand figure specified by ENTSO-E).

- Commodity entry charges and gas and coal transportation charges to power stations are taken into account in commodity prices.

- GB wholesale price projections include current charges, for example BSUoS and losses.

3.30. As a result, even if the methodology is based on the CBA 2.0 methodology established by ENTSO-E overall, the NRAs note that certain aspects of the analysis do not necessarily follow a strict application of this methodology.

3.31. In particular, the scarcity uplift could affect impact on the estimated benefits of the interconnector and their repartition. The validation of the modelling on the TYNDP scenarios highlights some differences further discussed later in this Section.

Preliminary analysis of AQUIND's scenarios

3.32. The following paragraphs describe the different scenarios and studies the NRAs are considering in assessing this exemption request, as well as AQUIND's scenarios.

Overview of existing studies and scenarios

3.33. For the purpose of the TYNDP 2018, ENTSO-E has developed different scenarios depending on the time horizon (2025, 2030 and 2040). Two scenarios covering years 2030 and 2040 have been designed with the EU 2050 targets as an objective. They have been constructed in cooperation with stakeholders representing among others the power industry, Non-Governmental Organisations, Member States and Regulators, and follow these storylines:

- Sustainable Transition (ST) – Targets reached through national regulation, emission trading schemes and subsidies, maximising the use of existing infrastructure.

- Distributed Generation (DG) – Prosumers at the centre, small-scale generation, batteries and fuel switching society engaged and empowered.

3.34. The joint scenario building process has three storylines for the new TYNDP 2020: Distributed Energy, Global Ambition and National Trends. National Trends (NT) is the central

policy scenario of the report, designed to reflect the most recent EU member state National Energy and Climate Plans (NECPs), submitted to the EC in line with the requirement to meet current EU 2030 energy strategy targets. Two other scenarios, Distributed Energy (DE) and Global Ambition (GA), take into account the target of achieving Net Zero by 2050. Finally, a Current Trend scenario, requested by ACER,[25] is based on the current development of the energy system in Europe.[26] It is worth noting that the scenarios of the TYNDP 2020 were recently finalised and published, although they are still undergoing public consultation.

3.35. The NRAs have conducted several studies on the benefits of new interconnectors between France and GB. We have summarised the one considered in the context of this exemption request below.

Cap and floor Window 2 projects assessment by Pöyry

3.36. In 2017, Ofgem consulted on the Initial Project Assessment (IPA) of new interconnectors applying for a cap and floor regime in the second application Window (W2). Ofgem commissioned Pöyry Management Consulting (UK) Ltd (Pöyry, now Afry) to conduct a study assessing the welfare impacts of these projects in GB.[27]

3.37. The aim of the Pöyry study was to analyse the needs case for each individual W2 interconnector, as well as the interactions and dependencies with the AQUIND interconnector, which was being developed under the exempt route at the same time.[28]

3.38. Details of the modelling approach, inputs and capacity market assumptions are available in the report referenced above.

3.39. The Pöyry report did not consider the AQUIND Interconnector as a standalone project.[29] However, where appropriate, aspects of the report relevant to AQUIND will be considered by the NRAs in the assessment of the exemption request.

[25] ACER Opinion No 06/2020: https://acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2006-2020%20on%20ENTSO-E%20and%20ENTSOG%20draft%20TYNDP%202020%20Scenario%20Report.pdf
[26] The Current Trend scenario was not included in the TYNDP 2020 Scenario Report and its dataset was not made publicly available. Hence, this scenario is not included in this document.
[27] Near-Term Interconnector Costbenefit Analysis: Independent Report (Cap & Floor Window 2): https://www.ofgem.gov.uk/system/files/docs/2018/01/near-term_interconnector_cost_and_benefit_analysis_-_independent_report_.pdf
[28] The specific information on AQUIND was not presented in the Pöyry's report because at the time of its publication the assessment of AQUIND initial exemption request was still ongoing.
[29] It is worth noting that whilst AQUIND SEW impacts were assessed alongside Window 2 projects, the

3.40. The NRAs acknowledge that some time has passed since Pöyry's analysis and since the assumptions used in that analysis were compiled, and that the actual development of wholesale markets and of other interconnector projects may have diverged from Pöyry's modelling.

3.41. Nonetheless, Ofgem considers the results of the study to still be relevant in the context of AQUIND's current exemption request in order to compare the analysis and final results of AQUIND's CBA and submission.

Network Options Assessment (NOA) 2020

3.42. The NOA is a study run by National Grid Electricity System Operator (NGESO) every year assessing the future needs of GB's electricity transmission system. It recommends to transmission owners which future investments best meet the future network requirements.

3.43. In its NOA 2020,[30] NGESO estimates that reaching a total interconnection capacity of between 18.1 GW and 23.1 GW by 2032 would provide the maximum benefit for GB consumers, depending on which scenario is considered. This is between three and five times the current level of operational GB interconnection of 5 GW.[31] In the two scenarios achieving the 2050 decarbonisation targets for UK, the NOA indicates optimal interconnection levels between France and GB around 6 GW and 9 GW (5.8 GW in the other scenarios).

Artelys studies

3.44. CRE conducted a study in 2017[32] aiming at estimating the potential consequences of Brexit on the relevance of any new interconnector project between France and the UK.

3.45. Different Brexit scenarios were modelled. The study demonstrated that Brexit may have a significant impact on the benefits of interconnector projects. Thereby, in the most favourable case, in which the UK remains in the internal energy market, but Brexit has an impact on the electricity demand and the development of renewable energy production capacities, the value of a new interconnector could decrease by up to 10%. In the case where

analysis was conducted on the assumption that the project would progress under an exemption without any consumer underwriting, rather than under a cap and floor regime. Any future regulatory decision in GB will require the reassessment of these impacts.

[30] Network Options Assessment 2020: https://www.nationalgrideso.com/document/162356/download

[31] The NRAs note that two additional interconnectors, IFA2 and Eleclink, are currently under construction. These will increase future GB operational interconnection capacity to 7 GW.

[32] Etude de la valeur des interconnexions entre la France et la Grande-Bretagne: https://www.cre.fr/content/download/17041/209395

electricity markets are decoupled, the value of a new interconnector could decrease by more than 30%.

3.46. In July 2019, CRE published a second study[33] estimating the optimal electricity interconnection capacity between France and GB, assuming market functioning and scenario outlook as if the UK to be still a member of the EU. The four scenarios in the study are designed in such a way to cover a wide range of possible futures in terms of generation mix, electricity demand or macroeconomic environment.

3.47. They are based on the scenarios from the TYNDP 2018, as well as the most recent national energy plans in France (with the French PPE) and in GB.[34] In all considered scenarios, the benefits remain lower than the average costs taking into account capital and operational expenditures and additional losses resulting from a new interconnector.

3.48. The average benefits over the four scenarios are only comparable to half of the costs of a new interconnector. CRE notes that the assumptions and results of this study are still relevant with regard to AQUIND's exemption application as they provide a basis of comparison with AQUIND's analysis.

Schéma Décennal de Développement de Réseau (SDDR) 2019

3.49. Every two years, RTE estimates the investment needs of the French electricity network, considering potential interconnection on a case-by-case basis.

3.50. In the last version of its ten-year network development plan, RTE targets a doubling of the interconnection capacity between France and its neighbouring countries by 2035, to reach 25 GW import capacity and 31 GW export capacity. Regarding the border between France and GB, the study concludes that, in addition to the existing interconnector and the two projects under construction, there could be economic value for up to maximum two additional interconnectors, depending on the scenario considered.

3.51. Therefore, RTE recommends that the projects between France and UK should be considered as a third priority ("paquet 2") and that the uncertainties around the economic profitability of the projects should be removed before engaging new projects. In particular, the estimated SEW for the AQUIND interconnector is lower than its annualised costs in all

[33] Détermination d'une capacité cible d'interconnexion électrique entre la France et le Royaume-Uni: https://www.cre.fr/content/download/21153/269950
[34] Updated Energy and emissions projections 2018: https://www.gov.uk/government/publications/updated-energy-and-emissions-projections-2018

scenarios before 2035. At the 2035 horizon, the benefits are lower than the costs in RTE's central scenario (PPE) and higher than the costs in the two other scenarios (*Ampère* and *Volt*).

Public consultation on TYNDP 2020

3.52. On 6 November 2020, ENTSO-E released a draft version of its bi-yearly pan-European plan for electricity infrastructure development for public consultation, which will close on 4 January 2020. This package links and complements national grid development plans by assessing how power links and storage can be used to make the energy transition happen in a cost-effective and secure way.

3.53. The package also presents the provisional CBA results for the projects considered in the plan. The NRAs note that these are more positive than the TYNDP 2018 results for the AQUIND Interconnector. However, the results have yet to be finalised by ENTSO-E following the outcome of the public consultation. Hence, these provisional results are not considered in this document. However, the NRAs will take note of these and the outcome of the consultation process in reaching a decision on this exemption request.

3.54. The study identifies needs for an additional capacity of 1.4 GW based on a forecasted 4 GW reference grid on the border between France and GB in the NT scenario in 2030 (other scenarios were not modelled). The study also acknowledges that other needs exist, such as improved security of supply, that can be delivered by individual projects.[35]

3.55. Whilst the modelling improved since the last version of the TYNDP, ENTSO-E acknowledges in its power system needs study that the analysis conducted it not fully reflective of the costs associated with internal reinforcement and congestion management that would be required to make the proposed increases in cross-border capacity possible. Moreover, ENTSO-E indicates that the identification of system needs methodology does not consider network losses. As a consequence, CRE notes that this could lead to an overestimation of the need for interconnection.[36]

[35] TYNDP 2020 Main Report: https://eepublicdownloads.blob.core.windows.net/public-cdn-container/tyndp-documents/TYNDP2020/Forconsultation/TYNDP2020_Report_forconsultation.pdf
[36] TYNDP 2020 Power System Needs Study: https://eepublicdownloads.blob.core.windows.net/public-cdn-container/tyndp-documents/IoSN2020/200810_IoSN2020mainreport_beforeconsultation.pdf

Review of commodities assumptions

3.56. AQUIND's scenarios are based on its own estimate of the commodity prices. They can be compared to the forecasts of the TYNDPs, based on ENTSO-E simulations, and to the forecasts of the World Energy Outlook (WEO), a worldwide reference regarding commodity prices. The WEO 2019 presents three scenarios that explore different possible futures:

- the Current Policies (CP) Scenario shows what happens if the world continues along its present path, without any additional changes in policy;
- the Stated Policies Scenario (SP), by contrast, incorporates today's policy intentions and targets;
- the Sustainable Development (SD) Scenario maps out a way to meet sustainable energy goals in full, requiring rapid and widespread changes across all parts of the energy system.

Figure 2 - Commodity prices: AQUIND's analysis vs TYNDP and WEO

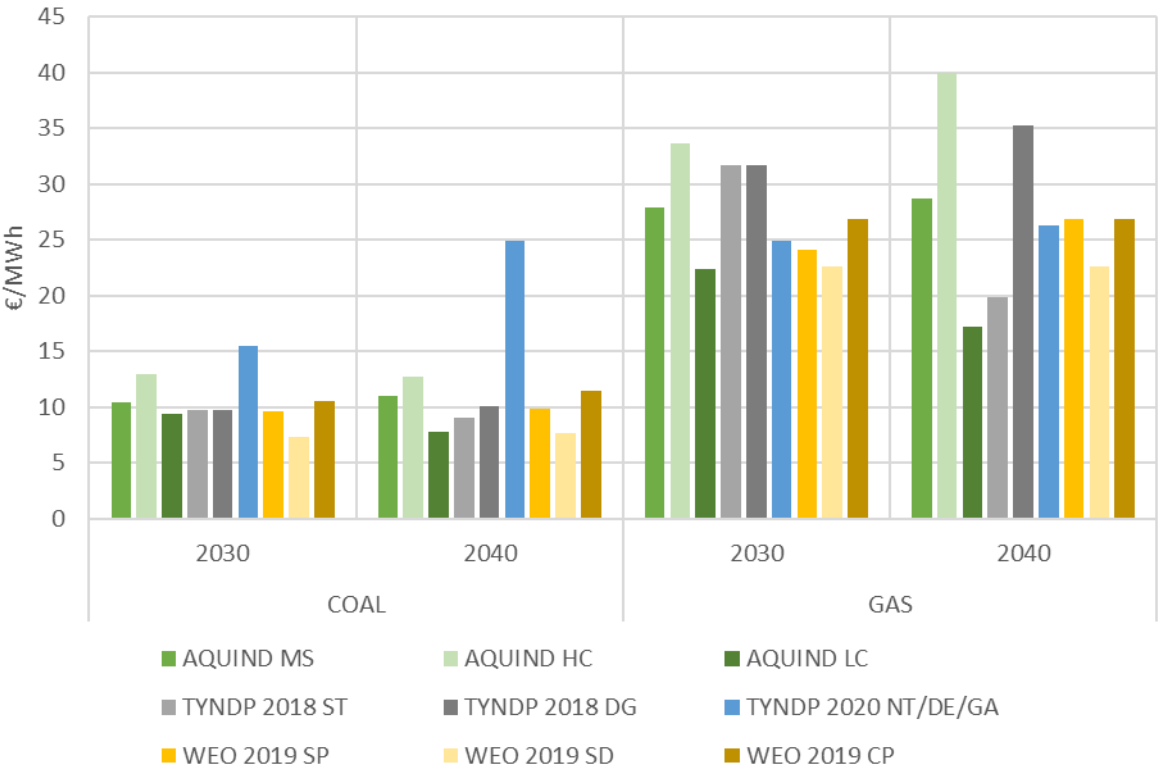
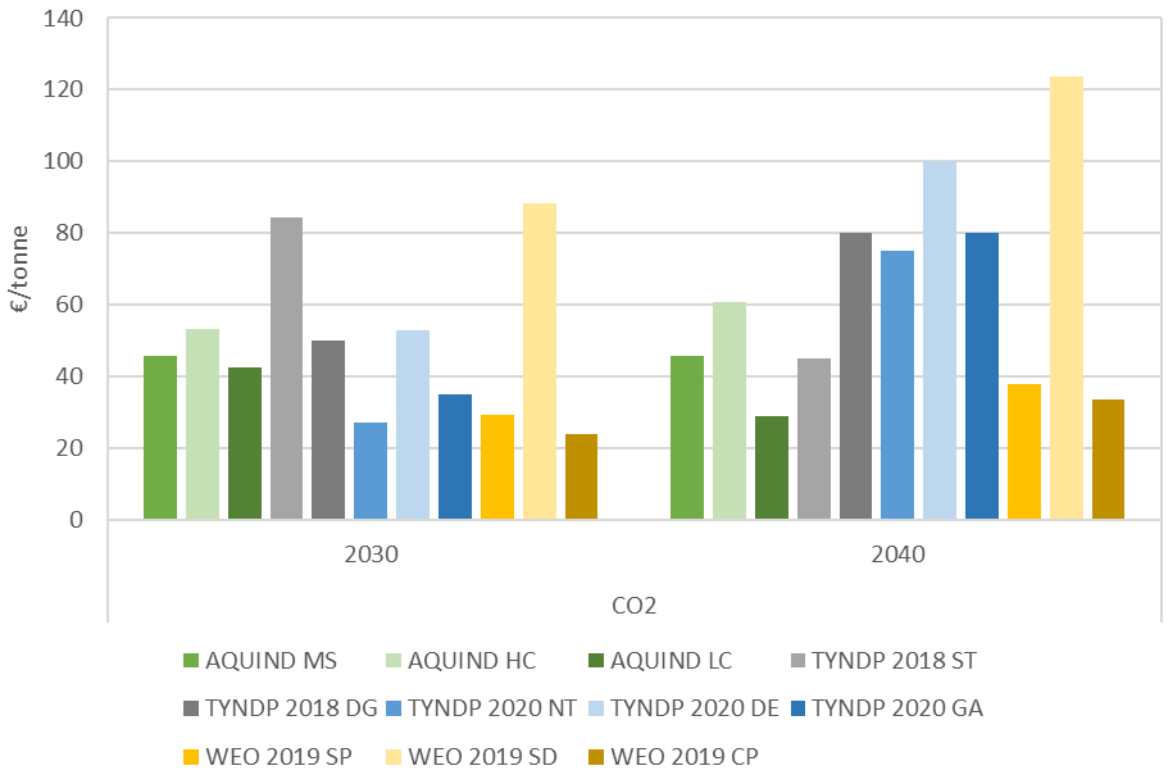


Figure 3 - CO2 prices: Aquind's analysis vs TYNDP and WEO



3.57. With regards to coal and natural gas, AQUIND's assumptions are on the upper end of the forecasts of the other scenarios. This has an impact on the other assumptions and on the profitability of the interconnector. Concerning CO_2 estimates, AQUIND's assumptions cover a relatively conservative range of prices.

3.58. However, this may be explained by the fact that the highest CO_2 price values in TYNDP or in the WEO are not based on market expectations but are set in order to meet a specific objective, independently of market functioning.

3.59. For instance, in the TYNDP 2018, the CO_2 price in the ST scenario was defined in order to ensure electricity generated from gas was cheaper than from coal. In the SD scenario of the WEO, a higher CO_2 price is assumed without considering the market expectations, and it is defined in order to reach the Sustainable Development Goals of the United Nation.

Review of electricity generation assumptions

3.60. The capacity mixes of the different scenarios are built according to the GB and European climate change objectives, which may differ according to the date of construction of the scenarios.

3.61. AQUIND's consultants made capacity changes in the medium-/long-term on the basis of projected profitability: in each scenario, they have determined the rate of return of each asset class and built new projects if they can meet a hurdle rate of return and closed capacity that is unprofitable.

3.62. As a result, some assumptions differ[37] between AQUIND's scenarios and the main scenarios from TYNDP 2018:

- Nuclear capacity in France is higher in AQUIND's Market Scenario than in the TYNDP 2018 by 50% and 20% in 2030 and 2040 respectively. Indeed, since the elaboration of the TYNDP 2018, the energy objectives have changed and the reduction of the share of nuclear generation to 50% has been postponed from 2025 to 2035. Therefore, AQUIND's assumptions are in line with the Government's ambition presented in the last PPE and incorporated in the NT scenario.

- Solar capacity in GB is lower in AQUIND's Market Scenario than in the TYNDP 2018, but slightly higher compared to TYNDP 2020 NT. Solar PV capacity in France is in line with the PPE, which is taken into account in the TYNDP 2020 NT.

- Wind capacity in France is lower in AQUIND's Market Scenario than in both TYNDP 2018 and 2020, thus lower than the last PPE. For what concerns GB, while onshore wind is higher in AQUIND's Scenario than both TYNDPs, offshore wind is significantly lower than the TYNDPs.

- Hydroelectric capacity in France is lower by around 25% in AQUIND's Market Scenario than in the TYNDPs. With respect to Germany, hydroelectric capacity is lower by 70% compared to the TYNDPs.

[37] The comparison focuses on GB, France, Germany and Spain as the core countries in AQUIND's CBA.

Figure 4 - Capacity mix in France: AQUIND's analysis vs TYNDP

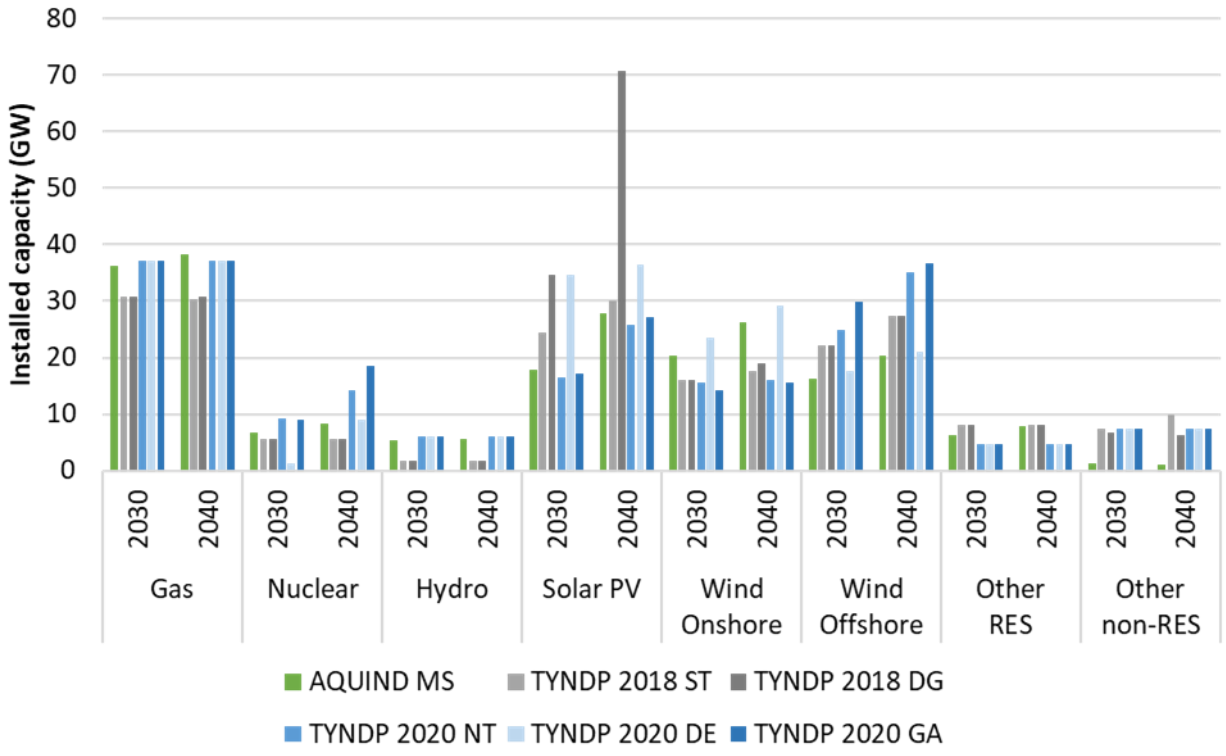
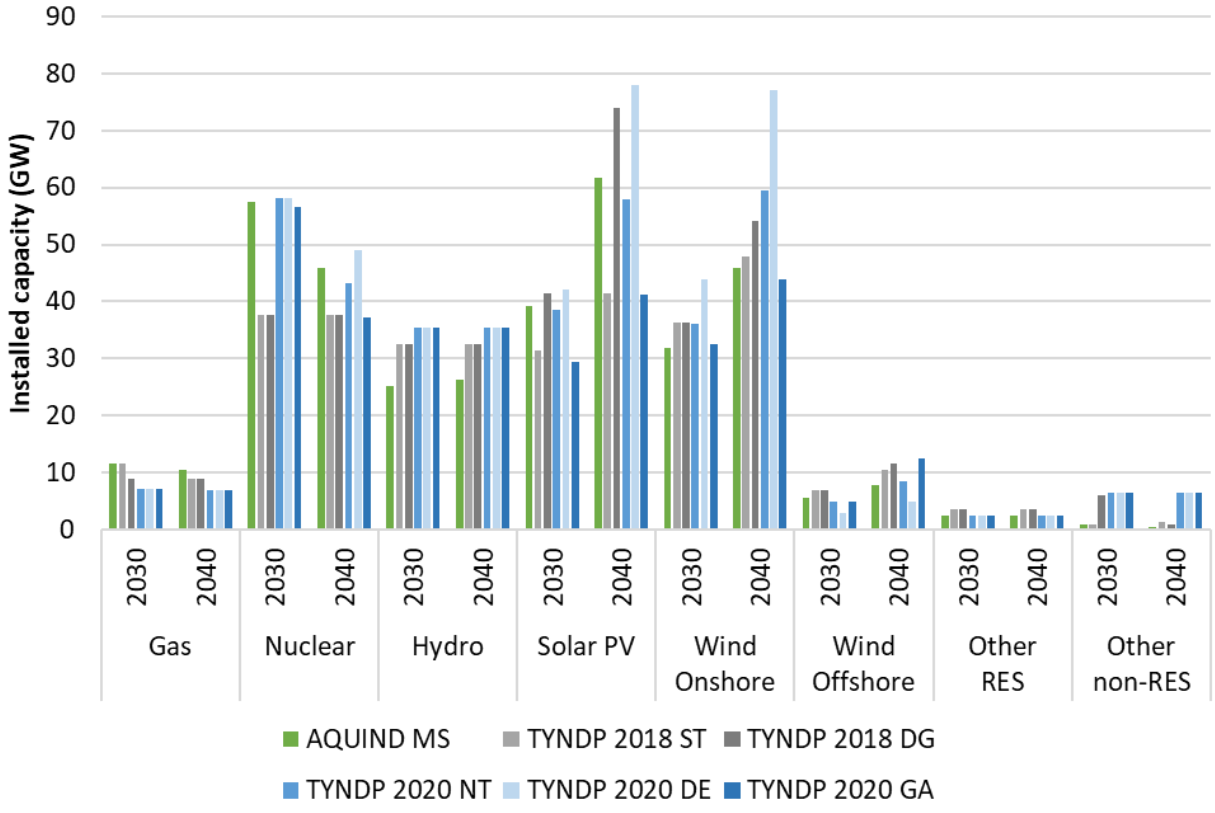


Figure 5 - Capacity mix in GB: AQUIND's analysis vs TYNDP



Review of electricity demand assumptions

3.63. Power demand is forecasted taking into account individual transmission system operator (TSO) expectations for the short- to medium-term and then making projections with respect to the evolution of business as usual, electric vehicle and heat pump demand.

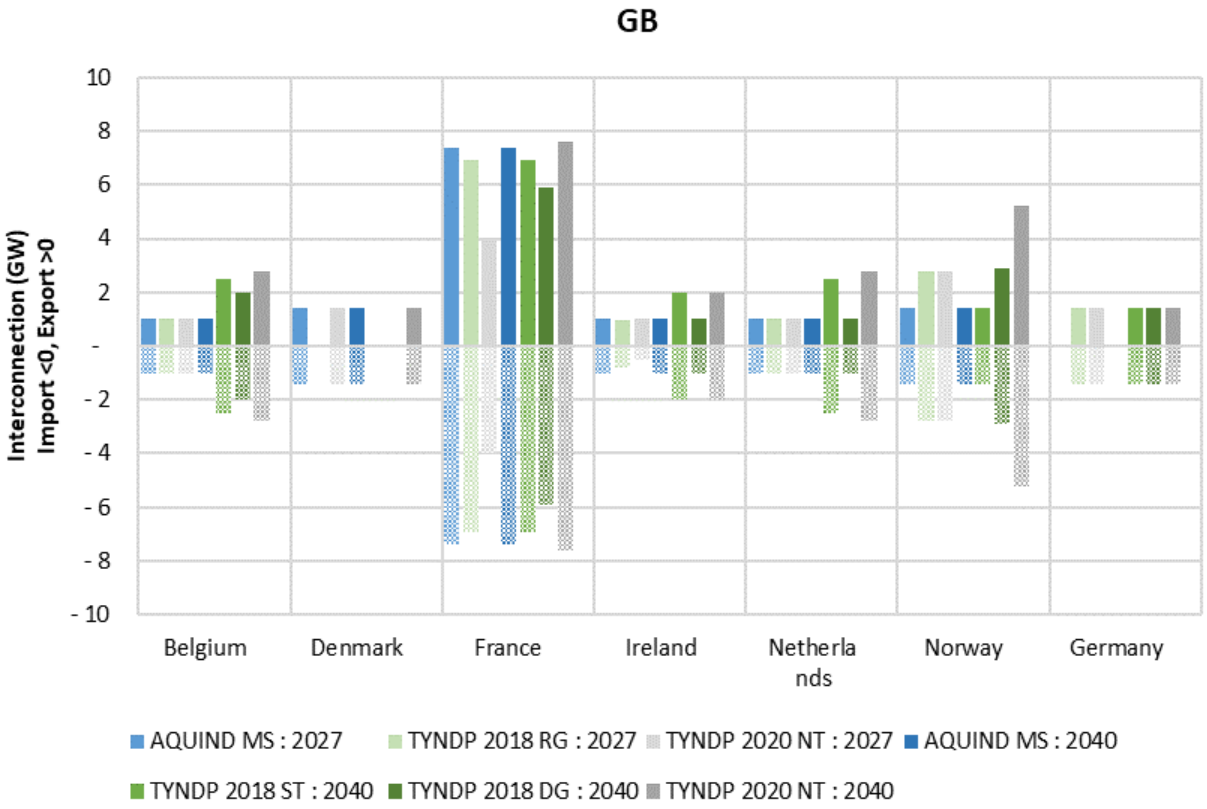
3.64. Generally, the demand modelled by AQUIND's consultants is in the upper range considered in the TYNDP 2018, especially in GB. It is comparable to the latest governmental ambitions in France, but in GB demand is higher by about 11% and 10% in comparison to the NT scenario in 2030 and 2040, respectively.

Review of electricity interconnection assumptions

3.65. AQUIND's consultants have different approaches to model the interconnectors in GB and the interconnectors between other Member States.

3.66. Regarding GB interconnectors, AQUIND's consultants take National Grid's interconnector register as the starting point and apply filters representing AQUIND's expectation of projects' viability. This analysis results in a lower interconnection capacity compared to the TYNDPs, notably on the borders with Belgium, Netherlands, Norway and Germany. In addition, interconnection capacity is kept unchanged in GB between 2027 and 2040. The only projects AQUIND's consultants consider, apart from the existing projects and those under construction, are a new interconnection with France (1.4 GW in 2023), a first interconnection with Denmark (1.4 GW in 2024) and a new interconnection with Ireland (0.5 GW in 2025).

Figure 6 - GB interconnection capacity: AQUIND's analysis vs TYNDP

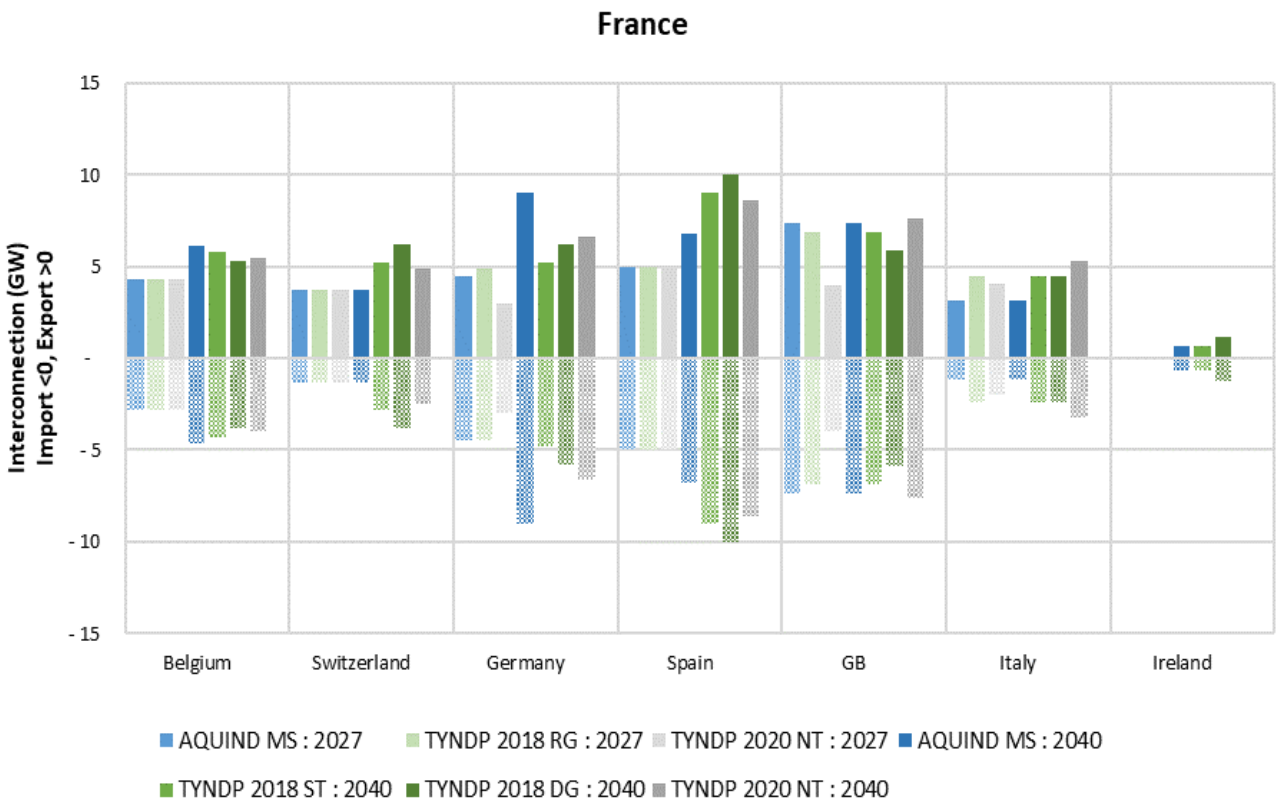


3.67. Regarding the French interconnectors (apart from the ones with GB), AQUIND's consultants use the TYNDP 2018 reference grid (for 2027) as a reference for the short-term and then applies an economic approach based on their estimation of the viability of standard projects.

3.68. This differs from the approach followed to estimate GB interconnection levels as AQUIND's consultants increased capacity on certain borders even though there are no specific project identified in TYNDPs at this stage.

3.69. Additionally, standard costs are considered excluding the need for reinforcement of the national network. As a result, interconnection capacity between France and its neighbours increases significantly between 2027 and 2040. A major discrepancy between AQUIND's assumptions and the TYNDPs is the interconnection capacity with Germany (9 GW in AQUIND's Market scenario, between 5.2 and 6.6 GW in the TYNPDs).

Figure 7 - French interconnector capacity: AQUIND's analysis vs TYNDP

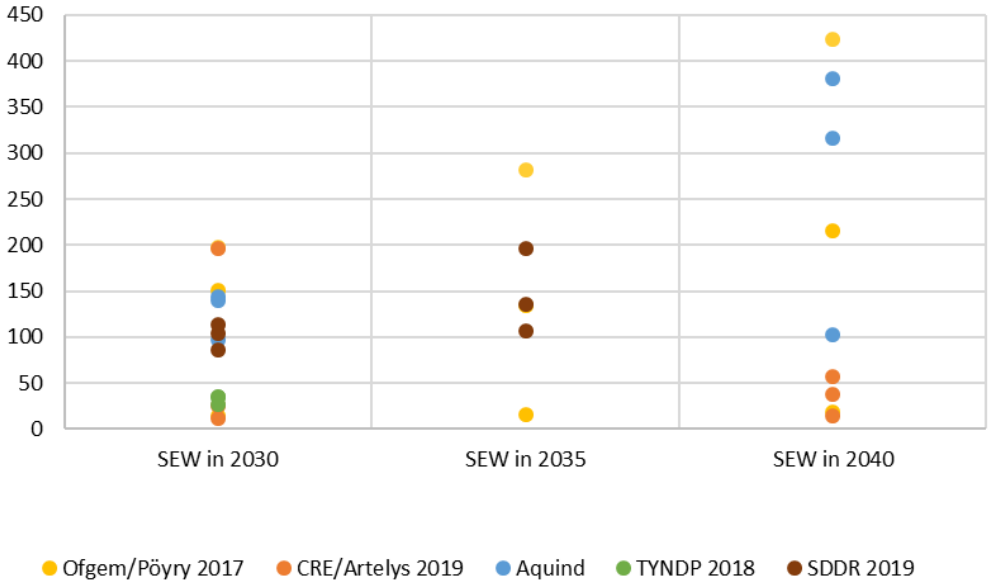


Preliminary analysis of the SEW results

Comparison with other studies

3.70. AQUIND's SEW results for 2030 are on the upper end of the range of benefit of the different studies considered here but are consistent with some scenarios from other studies. Even if there are only few results modelling the year 2040, the results in the Market scenario and the High Commodities/renewables scenario appear much higher than most of the other recent references.

Figure 8 - Range of values of the SEW results across different studies (excluding costs)



Sensitivity analyses

3.71. AQUIND performed several sets of analysis in order to evaluate the extent to which the Net Present Value (NPV) for the project is sensitive to certain assumptions. Given the complexity of the simulations used to estimate the cost of electrical losses and security of supply, these sensitivity analyses focus primarily on the socio-economic welfare.

3.72. The sensitivity analyses carried out by AQUIND's consultants give some indications of the effect of the different assumptions on the final results, summarised in the table below.

Table 5 - SEW (excluding cost) results of AQUIND Interconnector under the different sensitivity analyses (€m)

	Market Scenario	No Scarcity	Low IC	High IC	Brexit
SEW in 2030	140	163 (+16%)	158 (+13%)	112 (-20%)	149 (+6%)
SEW in 2040	316	313 (-1%)	358 (+13%)	201 (-36%)	294 (-7%)

3.73. Without scarcity mark-up, the value of the interconnector remains overall the same, but the repartition of the benefits is more balanced between France and GB.

3.74. By reducing the capacity between France and GB (-1.4 GW), the results are higher than in the Market Scenario. On the other hand, by increasing the capacity between France and GB (+1.4 GW), along with known additional interconnector projects to Norway (+1.4 GW), Germany (+1.4 GW) and Belgium (+1.4 GW), the results are lower than in the Market Scenario.

3.75. The modelling of Brexit by AQUIND's consultants is rather conservative compared to other studies, with a similar estimation of benefits. AQUIND's consultants assume continued reduction in trading efficiency due to the decoupling of British electricity markets from those of its neighbours, modelled by a market inefficiency fee – a cross-border charge that reduces the efficiency of cross-border trading between GB and continental Europe.

3.76. The study that CRE conducted in 2017 suggested that the value of a new interconnector could decrease by 10% to 30%.

3.77. Under a "soft" Brexit, the analysis assumed a lower deployment of renewable energy and a slower economic growth in the UK, leading to a 10% reduction of benefits.

3.78. Under a "hard" Brexit, the previous assumptions were completed by a decoupling of the British electricity markets from those of its neighbours, in parallel to additional investments in the UK to be able to independently guarantee security of supply, leading to a 30% reduction of benefits.

Uncertainties related to COVID

3.79. Following the outbreak of COVID 19, near term commodity prices have fallen to 30-year lows and long term outlook on electricity prices have been revised downwards.

3.80. The pandemic has had major impacts on the energy sector in the short term but also on the medium to long term. It might also have a considerable impact on power demand. Its impact on the total benefits brought by a new interconnector is uncertain. If the commodity prices remain lower than expected in the medium term, it could have an impact on price differentials between France and GB, which in turn would affect the project benefits.

3.81. In addition, the impact of the pandemic could lead to delays in investments in new power plants, so that interconnectors may play a more important role in the security of supply.

Preliminary analysis of the losses assessment

ENTSO-E CBA methodology

3.82. In order to calculate the difference in losses (in units of energy) and the related monetisation attributable to each project, the losses have to be computed in two different simulations with the help of network studies: one with, and one without the project.[38]

3.83. Regarding the geographical area of the model, the minimum requirement should be to use a regional network model. A regional model should include at least the relevant countries/bidding areas for the assessed project, typically the hosting countries, their neighbours, and the countries on which the project has a significant impact in terms of cross border capacity or generation pattern.

3.84. Regarding the relevant period of time, a calculation over the complete year, with sufficiently small time periods (typically one hour), should be aimed at being as closest as possible to reality. The chosen methodology must be representative for the considered period of time (in the TYNDP scenarios this means one complete calendar year).

3.85. Once the losses (i.e. in MWh) are calculated, their costs can be monetised. The approach is based on market prices that are taken from the marginal cost as given by the market simulation. More precisely, for a given project, losses are calculated for each time step of the year, *h*, and each market zone, *i*:

- The amount of losses, $p'_{h,i}$ (with project) and $p_{h,i}$ (without project) in MWh after eventual measures for securing the grid situation; and

- The marginal costs, $s'_{h,i}$ (with project) and $s_{h,i}$ (without project) in €/MWh for a given time step.

3.86. In the CBA 2.0 methodology, the delta cost of losses is calculated as the sum of *h* and *i* of the term $(p'_{h,i} * s'_{h,i}) - (p_{h,i} * s_{h,i})$. In the third version of the ENTSO-E Guideline (CBA 3.0), currently submitted to ACER, the methodology takes into account a double-counting of the

losses with the SEW calculation.[39] Thus, the delta cost of losses[40] is calculated as the sum of *h* and *i* of the term $s'_{h,I} * (p'_{h,i} - p_{h,i})$.

Differences with AQUIND's methodology

3.87. AQUIND has applied the methodology from the third ENTSO-E Guideline but modelled only a restricted group of countries: France, GB, Germany, Belgium and Netherlands.

3.88. AQUIND did a sensitivity analysis, including Spain in the model, and concluded that the variation of the variation of grid losses between the case with and without Spain observed was small (less than 10%) and in the uncertainty range. In comparison, the model used for TYNDP 2018 simulates Europe as a whole.

3.89. Moreover, in AQUIND's approach, an internal grid is only modelled for France and GB, whereas the other countries as considered as a single node. Consequently, AQUIND's model may not be able to capture the impact of the interconnector on the losses in internal networks.

3.90. After applying the ENTSO-E methodology to estimate the variation in grid losses due to the AQUIND Interconnector, a post-processing step was added to better align the estimation of grid losses to the estimation of the SEW by using the flows across AQUIND Interconnector as a proxy for the total system losses generated by AQUIND in GB, France and across Europe.

3.91. As the grid losses and the SEW are the results of two different modelling,[41] the annual flow across the GB-France border in the SEW estimation differ from the annual flow in the losses estimation. AQUIND has lowered the variation of the grid losses by a ratio corresponding to the decrease in annual flow in the SEW estimation (64% for the Market scenario). The NRAs note that although the intent from AQUIND is understandable, this approach may be simplistic.

[39] ENTSO-E acknowledges that the final results for network losses under the TYNDP 2018 were unexpectedly highly impacted for some projects by the difference in granularity of input variables or by projects different sensitivity to climate conditions, and recommends to use the results of losses computation with cautiousness.
[40] Formula for projects using the PINT method (Put IN one at the Time). The formula for TOOT projects (Take Out One at the Time) is $s_{h,I} * (p'_{h,i} - p_{h,i})$.
[41] SEW estimation is based on a market based approach, whereas grid losses estimation is based on a regional network modelling approach.

Comparison of results

3.92. Before taking into account the methodology from third version of the ENTSO-E Guideline (in order to avoid the double-counting effect), the increase of grid losses is estimated at €19 million per year in AQUIND's Market scenario, which is considerably lower than the estimations of TYNDP 2018.

3.93. AQUIND explains this difference by stressing the possible overestimation of the monetisation of the losses of the TYNDP 2018 and the variability of the variation of the grid losses and its monetization regarding different parameters.

3.94. As explained in the previous section, AQUIND's methodology includes important simplifications and differs from the TYNDP's one. Thus, the results are not consistent with the ones from TYNDP 2018 – higher in some scenarios, lower in other, significantly lower on average in 2030.

Table 6 - Increase in grid losses (€m/year)

	TYNDP 2018 scenarios				AQUIND scenarios		
	2025 BE	2030 DG	2030 ST	2030 EUCO	2030 MS	2030 HC	2030 LC
TYNDP 2018 (CBA 2.0)	16	108	22	48			
AQUIND's estimation (CBA 2.0)	60	32	33	3	19	9	42
AQUIND's estimation (project CBA 3.0)	17	25	26	-2	24	22	25
AQUIND's final estimation (post processing)					15	11	17

3.95. The application of the project CBA 3.0 methodology seems relevant to avoid the double-counting effect with the SEW.

3.96. AQUIND's post-processing step highlights the differences between the market-based approach used to compute SEW and the grid model approach used to compute grid losses. Moreover, the use of the flows across AQUIND Interconnector as a proxy for the total system

losses generated by AQUIND in GB, France and across Europe may generate disproportionate results, as the variation in total system losses is not necessarily proportionate to the flows across the AQUIND Interconnector.

Preliminary analysis of the security of supply estimates

3.97. As described in paragraphs 3.14 to 3.17, AQUIND has followed the TYNDP 2018 methodology with regard to the estimation of the adequacy to meet demand.

3.98. CRE notes that this methodology consists mainly of re-adapting the capacity mixes in the different countries in order to comply with the national criteria governing security of supply. Consequently, the savings in fuel costs and the benefits in terms of security of supply are estimated on the basis of different hypotheses, which could lead to consistency issues with national estimates of security of supply. The NRAs also note the limitations of this metholdolgy previously highlighted by ACER.[42]

3.99. The NRAs note that AQUIND's model does not include some of the major neighbours of the two hosting countries (Spain, Italy, Switzerland, Ireland). Interconnectors with these countries contribute significantly to security of supply in France and GB, but no exchanges are taken into account between the countries included and not included in the model. As other countries have a positive effect on the security of supply of the hosting countries, AQUIND's model may not be able to estimate correctly the security of supply provided by the AQUIND Interconnector.

3.100. Due to the methodology differences and the limited geographical scope of the study, the results vary considerably. The NRAs also note that the high value estimated in 2025 has a considerable impact on the CBA, as it is the only value estimated for the year 2025 and as such is used in all other scenarios as a starting point. Indeed, the discounting gives more importance to the short term over the long term.

3.101. In regards to the TYNDP 2018 calculations of SoS, the contribution of the AQUIND Interconnector in reducing energy not served[43] was considered to be zero in all scenarios at

[42] Opinion No 11/2019 Of The Agency For The Cooperation Of Energy Regulators: https://acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2011-2019%20on%20the%20ENTSO-E%20draft%20Ten-Year%20Network%20Development%20Plan%202018.pdf

[43] B6. Security of supply-Adequacy to meet demand indicator.

the 2030 and 2040 timeframes.[44] In AQUIND's modelling, the estimated values appear to be uncertain as they differ significantly compared to the reference TYNDP values.

Table 7 - Estimated security of supply: Aquind's analysis

	2025 BE	2030 DG	2030 ST	2030 EUCO	2030 MS	2030 HC	2030 LC
TYNDP 2018 (MWh/year)	0	0	0	0			
AQUIND's estimation (MWh/year)	6615	501	2539	191	1353	0	5833
AQUIND's estimation (m€/year)	66	5	25	2	14	0	58
AQUIND's final estimation (post processing in m€/year)					9	0	39

3.102. As for the losses calculation, the post-processing step highlights the differences between the market-based approach used to compute SEW and the grid model.

Preliminary analysis of the costs

3.103. With respect to costs, AQUIND included CAPEX, OPEX and development and consenting costs (DEVEX) based on the engagements with potential suppliers. Given that decommissioning is well beyond the time horizon of the regulatory regime and in line with the CBA 2.0 methodology, decommissioning costs are not included in AQUIND's CBA.

3.104. Replacement costs are also not included in AQUIND's CBA. The NRAs note that these are considered to be CAPEX in the CBA 2.0 methodology and should be included in the CBA. However, the NRAs also note that these costs only represent a very small proportion of the total costs of the project.

[44] The NRAs note that in its exemption request, AQUIND's consultants refer to SoS figures taken from a draft version of the TYNDP 2018. These were €15m for BE 2025, €57m ST 2030, €27m DG 2030, and €0m 2030 EUCO.

3.105. The CAPEX and DEVEX costs communicated by AQUIND are estimated at €1426 million. According to AQUIND, the proportion of the project that will be situated in French territory (including onshore and in French territorial waters) is 32%. The rest of the costs are either situated on the British territory (41%), either located in the marine waters between the two territories (27%). The operating and maintenance costs are estimated at €14.2 million per year.

3.106. The congestion costs and network reinforcement have not been monetised by AQUIND although they could be significant. In France, RTE analysis conducted in 2017 shows that the cost of managing constraints caused by AQUIND could be in the region of €20-40m/year. AQUIND considers however that the congestion costs in France may be withdrawn if RTE invests in the network to address the constraints. According to AQUIND, this option would be more cost-effective as it would cost €47 million in network reinforcements (one-off). The NRAs would also consider potential impacts on congestion costs in GB in their final assessment.

Summary of the CBA results

3.107. AQUIND's analysis highlights important benefits in all scenarios in Europe as a whole, and in particular in France. NRAs note that, in comparison, TYNDP 2018 results for SEW and grid losses would result in lower benefit that do not compensate the estimated costs of the project.

3.108. As initial consideration of the project benefits, the NRAs have compared the SEW results from the different studies considered to the costs and other benefits of the project.

Table 8 - Comparison of the different monetised benefits (€m/year)

	AQUIND	TYNDP 2018	CRE/Artelys 2019	SDDR 2019	Ofgem/Pöyry 2017
Annualised costs	-114[45]				
SEW (average of the different scenarios)	175	28	47	118	152
Losses	-14	-59 (average of TYNDP 2018 scenarios)			
Security of supply	16	0 (average of TYNDP 2018 scenarios)			
Total	**62**	**-146**	**-127**	**-55**	**18**
Variation of congestion cost	0	-30 (average of RTE's minimum and maximum)			
Total incl. congestion cost	**62**	**-176**	**-157**	**-85**	**-12**

3.109. These results do not take into account the impact of Brexit, which could reduce the benefits of the project between 5% (AQUIND's estimate) and 30% (CRE's estimate of a "hard Brexit").

[45] The NRAs note that these costs are beared by the developers and by French and GB network users. In GB, if a cap and floor regime is granted to the project, some of the costs indicated could be covered by GB consumers if the project revenues fall below the floor. In France, this risk does not materialise under an exemption. Conversely, part of the SEW results will not benefit the French and GB network users as they will be retained by Aquind to cover the costs and the expected profotability of the project. The total row aggregates the impact of the project on AQUIND and on the European electricity system.

4. Preliminary analysis of the exemption request

Section summary

This section summarises the information presented by AQUIND to demonstrate how its exemption request meets the six exemption conditions laid down in article 63(1) of the Regulation. It also provides the NRAs initial view on it.

4.1. Throughout this section, the NRAs refer to the EC guidance document on new infrastructure exemptions.[46] We recognise this is outdated to some extent but it remains the most recent guidance on the exemption process published by a relevant EU body. As such, the NRAs believe it is still relevant for this of exemption requests and it will be used to inform our analysis as appropriate.

Criterion (a): the investment must enhance competition in electricity supply

4.2. AQUIND considers that the new interconnector will increase (i) traded volumes (liquidity) of electricity (ii) competition in the provision of capacity through the GB and French capacity markets, and (iii) the range of providers of GB-France cross-border capacity.

4.3. AQUIND intends to allocate all capacity on the basis of the prevailing allocation mechanisms and rules. Therefore, AQUIND argues that the increase in cross-border capacity between France and GB will not have any adverse impact on competition in this respect.

4.4. With regards to market concentration, AQUIND has applied two methods of competition analysis to assess the effect of the project on competition: the Herfindahl-Hirschman Index (HHI) and the Residual Supplier Index (RSI).

[46] Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in Electricity: https://ec.europa.eu/energy/sites/ener/files/documents/sec_2009-642.pdf

HHI Result

4.5. The HHI measures the concentration of the relevant market at a given point in time by calculating the sum of the squared market shares of all market participants. The HHI analysis can be read as follows:

- an HHI value below 1000 suggests an un-concentrated and highly competitive market;
- an HHI between 1000 and 1800 indicates a moderately concentrated market;
- an HHI above 1800 indicates a highly concentrated market.

4.6. AQUIND estimates average HHI in French generation in 2015 to be 8,131 before export.[47] With the AQUIND interconnector, AQUIND estimates the average HHI to reduce slightly to 8,040. Based on this result, AQUIND concludes that the impact of interconnector flows on total annual French generation is negligible.

4.7. Similarly, AQUIND's analysis concludes that the introduction of an additional interconnector would have a limited impact on GB generation market concentration. The analysis results in a change in the GB HHI from 1,267 to 1,278.

RSI Result

4.8. The RSI analysis focusses on the position of the largest suppliers in both GB and French markets and considers whether AQUIND will increase their influence on market prices.

4.9. AQUIND notes that the allocation of the cross-border capacity of the interconnector could influence the RSI result. Its RSI analysis is therefore conducted under three scenarios, for which varying shares of interconnector capacity are allocated to EDF - the supplier with the highest market share in both markets. Further details are provided in Exhibit 2.

4.10. AQUIND concludes that the impact of the AQUIND Interconnector on market competition in France is minimal for two reasons. Firstly, imports into France do not occur

[47] AQUIND first considers the market concentration in GB and France for 2015 without considering imports and exports. Then, AQUIND introduce a theoretical interconnector, based on the flow profile for 2015 of the IFA interconnector, to evaluate the impact of a new interconnector on market concentration in GB and France.

frequently, as power prices are typically higher in GB. Secondly, EDF's market share is already considerable, hence the impact of the additional interconnector is relatively small.

4.11. The RSI analysis highlights a higher impact of the AQUIND Interconnector on the GB market than in France, given the smaller share of generation capacity currently held by EDF in the UK. The analysis shows that adding 2 GW of interconnection capacity would improve the RSI when EDF is allocated 20% of the interconnector capacity. On the contrary, AQUIND also indicates that if a higher share of the interconnector capacity is allocated to EDF, it would increase EDF's market power in GB.

NRAs' preliminary analysis

4.12. On a general basis, a new interconnection is likely to generate positive effects on competition. In particular, it creates opportunities for economic trade between connected power markets and thus may increase the liquidity of these markets.

4.13. In practice, AQUIND's analyses of the market concentration using HHI and RSI methodologies highlight a marginal effect of additional interconnection capacity on competition. These analyses focus on the markets in GB and France, which the NRAs consider to be the right markets for competition analysis.

4.14. With regard to increased competition in capacity markets, AQUIND only considers the GB Capacity Market, in which the interconnector will broaden the pool of participants. AQUIND does not provide a quantitative analysis to estimate the effect of the interconnector on this market. All this considered, the NRAs initial view is that the AQUIND Interconnector would only have a marginal impact on competition in electricity supply, this impact being likely positive.

Question 5: Do you consider AQUIND's proposed investment enhances competition in electricity supply and therefore meets condition (a)?

Criterion (b): the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted

4.15. The analysis of the satisfaction of this condition is twofold. First, under Article 63, paragraph 1(b) of the Regulation, AQUIND has to demonstrate that the risk attached to the project is such that the investment would not take place unless the exemption is granted.

4.16. The NRAs also note that the scope of the exemption and its duration need to be proportionate to the risk taken by the developers.

4.17. In its exemption request, AQUIND refers to various types of risks which would justify an exemption, namely:

- the revenue uncertainty arising from competing projects, being exposed to market pricing in France and GB, macroeconomic and policy risks (including Brexit) and curtailment risk;
- the construction risk arising from the size and technical complexity of the project;
- the restrictions in French law prohibiting any entity other than RTE from developing, constructing and operating regulated interconnectors.

Level of risk attached to the investment

4.18. AQUIND indicates that the level of risk attached to the AQUIND interconnector is linked to uncertainty around both the costs of the project and the revenues it is expected to generate.

4.19. AQUIND considers the project to be particularly risky due to the offshore construction and operating costs inherent to large infrastructure projects. AQUIND states that the project size and configuration increase its technical complexity, leading to risks of cost overruns.

4.20. With respect to the revenue risk, AQUIND distinguishes different sources of uncertainty:

- AQUIND Interconnector will face direct competition from other projects – on top of the interconnections already commissioned or under construction (IFA, IFA2 and ElecLink), two other projects (FABLink and GridLink) are under consideration, which could reduce

the price differential between GB and France and thus the revenue expectations for AQUIND.

- Market volatility – the three scenarios modelled by AQUIND (Market Scenario, Low Commodities, High Commodities/Renewables) describe different scenarios for the French and GB wholesale electricity markets, indicating uncertainty around arbitrage revenues for AQUIND.

- Macroeconomic and policy risk – government and regulatory decisions (carbon price support, capacity markets, exchanges rates, interest rates, etc.) have a significant impact on the GB, French and wider European wholesale electricity markets, which adds to other unpredictable risks (Covid-19 for example).

- Operation, connection and curtailment risk – between 2024 and 2029, under the terms of its connection offer in GB, the connection will be "non-firm" which means that National Grid may limit AQUIND's available export and import capacity if needed without compensation.

NRA's preliminary analysis

4.21. Usually, new infrastructure investments face two main risks: the risk of non-use of the investment and the risk of a change in costs and/or revenues in the future. Given the liquidity of the power markets in GB and France, the risk of non-use of the investment is relatively marginal. Hence, the NRAs believe the assessment of this exemption request under criterion (b) should focus on the uncertainty regarding costs and revenues.

4.22. In Section 3 of this consultation, a number of studies are considered and show a variety of results, especially in terms of socio-economic welfare. Nonetheless, in all scenarios and sensitivity analyses of AQUIND's CBA, the revenues of the project outweigh the costs.

4.23. Uncertainties related to the consequences of Brexit could be a major factor of risk borne by AQUIND. Indeed, the study that CRE conducted in 2017, as described in paragraphs 3.44 and 3.45, suggested that the value of a new interconnector could decrease by 10% to 30%.

4.24. Nevertheless, even with a 30% decrease of the revenues under AQUIND Market scenario, AQUIND would still be able to cover the costs of the project. The NRAs also note

that in its Brexit sensitivity, AQUIND estimates that the project's revenues would be marginally higher than in the reference "Market Scenario".

4.25. The NRAs note that AQUIND's economic and financial analyses do not demonstrate a considerable risk of a change in costs and/or revenues in the future.

4.26. The NRAs would also note the specific situation of the French-GB border, where other projects are proposed in parallel. This point is also discussed in relation to criterion (f) later in this document.

4.27. The greater risk of the AQUIND Interconnector could be justified by the size and configuration of the project or by the competition of the other projects currently under development, if they go ahead.

4.28. By the time of the decision, the NRAs will also take into account the progress and the maturity of the regulated projects on the border between France and GB in order to assess the risk undertaken by AQUIND and the interactions among them.

4.29. The NRAs note that, as AQUIND acknowledges, some revenue certainty would be achieved on the regulated portion (e.g. through the cap and floor regime in GB)[48] of AQUIND Interconnector under the proposed partial exemption. However, AQUIND may retain some revenue risk as part of its revenues are not regulated.

Question 6: Do you consider that the risk attached to AQUIND's project is such that the investment would not take place unless an exemption is granted and that it therefore meets condition (b) Article 63?

Question 7: In particular, do you consider that the other projects in development on the border between France and GB constitute a significant risk for AQUIND?

Regulatory routes for the project

4.30. AQUIND indicates that an exemption is the only regulatory route currently at its disposal to build and operate the interconnector in France.

[48] Ofgem notes that this is subject to the submission and positive assessment of a valid application under the regime.

4.31. AQUIND was not included in the fourth Union List of Projects of Common Interest (PCIs), published in the Official Journal of the European Union on 11th March 2020.[49] This prevents AQUIND from requesting a regulated regime under the Cross-Border Cost Allocation mechanism described in Article 12 of the TEN-E Regulation, which is reserved exclusively to PCIs.

4.32. Moreover, under French law, no specific regime for the development, construction and operation of interconnectors operated by private investors is provided.

4.33. Therefore, AQUIND considers that there is no alternative route in order for the project to benefit from a regulated regime in France. Consequently, AQUIND states that an exemption is required in order for it to develop and operate the AQUIND Interconnector in France.

4.34. Given the above, AQUIND seeks a partial exemption to allow the project to progress in France. The developers consider the scope of the exemption proportionate in the sense that it covers the French territory only, i.e. onshore and the part of the marine cable route within the French territorial waters, and only in respect of the Use of Revenues.

NRA's preliminary analysis

4.35. Usually, the main risks borne by an interconnection project are the risk of non-use of the investment and the risk of a change in costs and/or revenues in the future. Nevertheless, a risk highlighted by Aquind is the absence of alternative regulatory arrangements provided for under French law given its situation.

4.36. When published, the EC guidance did not anticipate the unavailability of a regulated regime as a risk to be considered in the assessment of criterion (b) of the Regulation. However, in its decision published in June 2018 [50] on the first exemption request for the AQUIND Interconnector, ACER indicates that the assessment of the level of risk borne by AQUIND at that time should have also included an assessment of whether a regulated regime (with financial underpinning) was available.

[49] For further information, please visit : https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL%3A2020%3A074%3ATOC

[50] Decision Of The Agency For The Cooperation Of Energy Regulators No 05/2018: https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Individual%20decisions/ACER%20Decision%2005-2018%20on%20AQUIND.pdf

4.37. That said, the NRAs note that, while the ACER Board of Appeal initially confirmed this decision, that decision by the Board of Appeal was annulled by the CJEU on 18 November 2020. The NRAs acknowledge the potential limitations of the precedent set by ACER's decision of June 2018 and pay due regard to the CJEU's recent judgment. The full text of this judgment can be found on the Court's website.

4.38. In conclusion, the NRAs recognise that AQUIND is not eligible to request a regulated regime under the Article 12 of the TEN-E Regulation as well as the absence of specific regulated market route for private investors in France. The NRAs would have to consider the project's overall risk profile in order to assess the fulfilment of criterion (b).

Question 8: Do you consider that the ineligibility to the Article 12 of the TEN-E Regulation, as well as the absence of a specific regulated market route for private investors under French law, fulfils criterion (b)?

Revenue sharing mechanism

4.39. AQUIND proposes that a profit sharing mechanism is applied in order to ensure that any additional welfare attributable to the exempted part of the project is appropriately distributed between investors and French grid users. AQUIND indicates that the purpose of this mechanism is not to compensate any party for the fact of the existence of AQUIND and should not function as a cap on profits or revenues.

4.40. AQUIND's initial[51] proposal was the following: if the present value of profits related to the Exempt Portion of the Project, discounted at a nominal rate of [confidential], is positive, then 50% of these profits would be transferred from AQUIND to RTE (and hence to French network users).

4.41. In the response to the request for additional information by the NRAs, AQUIND reviewed the different financial parameters of the project and has changed the initial proposition of profit sharing mechanism. AQUIND proposes different variations of profit sharing mechanisms, all based on the assumption that any profit sharing commences only after the initial capital investment of the exempted portion of the project is repaid according

[51] AQUIND's exemption request received on 29 May 2020 by Ofgem and on 2 June 2020 by CRE

to the discounted payback method. However, these mechanisms differ on the basis on which the threshold is calculated based on the following elements:

- total project Internal Rate of Return (IRR) combining the exempted and the regulated portions of the project;
- total project Equity Rate of Return;
- exempted portion IRR; or
- exempted portion Equity Rate of Return.

4.42. AQUIND justifies the parameters of its proposals through comparisons with LNG terminals' regulation and the IFA2 regulatory framework in France. The developers also analyse the expected rate of return in relation to ElecLink and considers that the AQUIND Interconnector is a riskier project for different reasons:

- ElecLink was granted an exemption that provided the right to place long-term capacity contracts in the market, which can provide some financing certainty;
- ElecLink was granted an exemption in a less competitive market.

NRA's preliminary analysis

4.43. In principle, a profit sharing mechanism can be an effective tool to share the risk and the benefits between the project owner and the network users. Such mechanisms were considered in other exemption decisions, in particular for ElecLink. The exemption decision includes a sharing of the revenues on a 50% basis above a threshold based on the project IRR.

4.44. However, according to AQUIND's analysis, the IRR of the exempted portion varies across the different scenarios and sensitivity analyses, but does not reach AQUIND's proposed thresholds. This means that no revenues would be shared with the French grid users in any of the modelled scenarios. AQUIND explains that the range of the scenarios presented to the NRAs as part of the submission represents a credible range of revenue outcomes, all of which are foreseeable and not in any way exceptional.

4.45. Therefore, the NRAs note that the mechanism proposed by AQUIND would share revenues with the French grid users only under particular circumstances, i.e. when revenues are significantly high.

4.46. For what concerns the comparison between AQUIND, with IFA2 and ElecLink, the NRAs note these faced different financing conditions at the time of the regulatory decisions. Regarding the portion of IFA2 owned by RTE, the costs are included in the Regulated Asset Base (RAB) of the operator, the remuneration of which evolves every four years in line with the electricity transmission tariffs. Therefore, the remuneration rate applied to RTE's RAB when RTE decided to invest was 6.125% pre-tax, but this level was not guaranteed for the whole duration of the project. For the next tariff period (TURPE6 – 2021-2024), CRE considers[52] a pre-tax WACC between 4.2% and 4.7%, by taking into account, in particular, the decrease of the interest rates since the IFA2 project was decided.

4.47. ElecLink faces specific uncertainties regarding its costs and permitting process, as it goes through the Channel Tunnel. The risks specific to the Channel Tunnel make the project challenging to develop and operate. These risks are illustrated by the fact that the Intergovernmental Commission (IGC) issued a conditional consent for this project in 2014 and suspended consent in October 2017, in order to properly assess the relevant safety issues. The NRAs note that the consent has been reinstated in December 2020, and the installation of the cable is now permitted.[53]

4.48. On the other hand, the NRAs recognise that Eleclink does not face the risks and uncertainties associated with the development of a submarine cable as envisaged for the AQUIND Interconnector. However, the NRAs also note that other projects between France and GB face the risks and uncertainties associated with the development of submarine cable, while following a regulated route.

4.49. In conclusion, whilst the concept of a revenue sharing mechanism is welcomed, the NRAs note that this has to fairly balance the risk and benefits of the project with the French consumers. CRE's initial view is that it is not the case with the proposed revenue sharing mechanism.

[52] Consultation publique n°2020-015 du 1er octobre 2020 relative au prochain tarif d'utilisation des réseaux publics de transport d'électricité (TURPE 6 HTB) : https://www.cre.fr/Documents/Consultations-publiques/prochain-tarif-d-utilisation-des-reseaux-publics-de-transport-d-electricite-turpe-6-htb

[53] The NRAs also note that this consent is subject to additional conditions being met and a further IGC consent before the project can be commissioned.

Question 9: Are you favourable to the principle of a revenue sharing mechanism? Do you have any views on the parameter of such mechanism, e.g. the IRR threshold?

Criterion (c): the interconnector must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that interconnector will be built

4.50. In its exemption request, AQUIND confirms that none of its entities (AQUIND SAS and AQUIND Limited) has any affiliation with the national TSOs in either GB or France (National Grid or RTE).

NRA's preliminary analysis

4.51. From the representations made by AQUIND on this matter, it appears clear that AQUIND is a separate legal entity that is independent from the system operators in both GB and France. On the basis of these representations, the NRAs' initial view is that this condition is met.

Question 10: In your opinion, is there any reason to consider that condition (c) is not fulfilled? If so, why?

Criterion (d): charges are levied on users of that interconnector

4.52. All of AQUIND's capacity will be allocated through competitive auctions. Interconnector users will be charged based on the results of the auctions, in line with the prevailing regulations.

NRA's preliminary analysis

4.53. In the guidance on the application of the exemption conditions, the EC outlines this criterion is aimed at ring-fencing non-regulated activities of transmission systems operators if

it is those which operate an exempted infrastructure. Therefore, the NRAs' initial view is that this condition is met.

4.54. NRAs note that other charges may be levied on the network users via the participation to the capacity markets in accordance with the general national regulatory framework. If AQUIND participates to Capacity Markets in GB or France, these charges would be levied on the electricity consumers. However, in this case the project is likely to reduce the cost of capacity contracts to the benefit of the same consumers.

Question 11: In your opinion, is there any reason to consider that condition (d) is not fulfilled? If so, why?

Criterion (e): no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector

4.55. According to AQUIND, no part of the capital or operating costs relating to the exempted portion has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector.

NRA's preliminary analysis

4.56. The NRAs note that since this is a new (proposed) investment, no part of the capital costs invested will be recovered from any component of charges made for the use of the transmission or distribution systems linked by the interconnector. Accordingly, the NRAs' initial view is that this condition is met.

Question 12: In your opinion, is there any reason to consider that condition (e) is not fulfilled? If so, why?

Criterion (f): the exemption must not be to the detriment of competition or the effective functioning of the internal market in electricity, or the efficient functioning of the regulated system to which the interconnector is linked

4.57. Criterion (f) consists of a three part tests:

- Test 1: the exemption is not detrimental to competition;
- Test 2: the exemption is not detrimental to the effective functioning of the internal electricity market; and
- Test 3: the exemption is not detrimental to the efficient functioning of the regulated systems to which the interconnector is linked.

Detriment to competition

4.58. As explained under the analysis of criterion (a), AQUIND considers that the project is likely to improve competition in the electricity markets, even though its impact will be rather limited. Moreover, given that AQUIND does not seek an exemption for Third Party Access obligations, they consider that the conditions of the exemption are unlikely to negatively affect competition.

4.59. AQUIND recognises that the investment will reduce the expected revenue for other interconnectors between France and GB, and change revenue expectation of other interconnectors connecting to third countries. They also note that this is an inevitable consequence of price harmonisation across Europe, the latter being one of desired policy goals of the EU.

NRA's preliminary analysis

4.60. Because of the compliance to Third Party Access obligations, the NRAs are minded to believe that the project will probably not be to the detriment of competition in electricity supply. AQUIND would offer all its capacity on a non-discriminatory basis as the other non-exempt interconnectors on the GB-France border.

4.61. In its guidance on the application of the exemption conditions, the EC outlines that condition (f) has similarities with condition (a) regarding competition but that, in this case, the exemption itself should not be to the detriment of the competitive functioning of the

market. In particular, the EC recommends to consider "the repercussions that the exemption may have on other projects, whether regulated, exempted or submitted for exemption".

4.62. The NRAs therefore note that by reducing the price differential between France and GB, a new interconnector will reduce the revenues of the existing interconnectors and those under construction. Moreover, it could also impact the other projects under development which are also at advanced stages of regulatory engagement. The different sensitivity analyses presented by AQUIND highlight that the benefits of some projects connecting GB to continental Europe are competing with the benefits brought by the AQUIND Interconnector.

4.63. The NRAs note that the AQUIND Interconnector is competiting with other projects on the border between France and GB. These projects will be considered together to understand whether or not AQUIND's exemption request is detrimental to competiton.

Question 13: Do you consider that the AQUIND Interconnector is competing with the other projects on the border between France and GB?

Question 14: Do you consider the exemption requested by AQUIND would not be to the detriment of competition and that it therefore meets test 1 of condition (f)?

Effective functioning of the internal market in electricity

4.64. AQUIND considers the project will allow for a more efficient dispatch of generation, thereby contributing to the efficient functioning of the French and GB markets.

NRA's preliminary analysis

4.65. The functioning of the internal market in electricity could be undermined by a new exempted interconnection in case the operator optimises the use only of its own infrastructure, regardless of implications for congestion or production costs in other parts of the network.

4.66. As AQUIND does not seek an exemption from the approval of charging and access rules, the physical use of the interconnector would be integrated with the wider capacity allocation and congestion management methods, which should ensure an effective functioning of the internal market in electricity.

4.67. However, the NRAs note that Brexit may have an impact on the access rules and on the functioning of the electricity market.

4.68. In particular, the EC published a communication[54] in July 2020 on readiness at the end of the transition period between the European Union and the UK, in which it states: "*the United Kingdom will no longer participate in the Union's dedicated platforms. Alternative fall-back solutions will be used instead to trade electricity on interconnectors with Great Britain. These should allow electricity trade to continue, although not with the same level of efficiency as within the Single Market today*".

4.69. Given the above, the NRAs' initial view is that AQUIND would not be detrimental to the functioning of the internal electricity market, although it may be affected by the impact of Brexit on access rules and in terms of coordination.

4.70. Finally, the results of the TYNDP 2018, the SDDR and the study from Artelys of 2019 described in Section 3 suggest that additional interconnection between France and GB may have a negative impact on the overall socio-economic welfare, and therefore the internal electricity market.

Question 15: Do you consider the exemption requested by AQUIND would not be to the detriment of the effective functioning of the internal market in electricity and that it therefore meets test 2 of condition (f)?

Efficient functioning of the regulated systems to which the interconnector is connected

4.71. AQUIND employed an independent technical consultancy to assess the impact of the Interconnector on the continental European transmission system. The study focussed on system stability after an outage in the transmission grid, compliance with network security requirements and voltage levels on the transmission grid as a result of increasing import/export capability between France and GB.

[54] Getting ready for changes - Communication on readiness at the end of the transition period between the European Union and the United Kingdom: https://ec.europa.eu/info/publications/getting-ready-changes-communication-readiness-end-transition-period-between-european-union-and-united-kingdom_en

4.72. The analysis concludes that the introduction of a new interconnector "*between France and Great Britain has no severe negative impact on the continental European transmission system concerning the aspects taken into account in this study. Any problems that might arise could be managed by the design of AQUIND Interconnector and the respective converter stations itself. In particular, the realisation of AQUIND Interconnector would not cause additional investments in the transmission grid (for instance in order to restore the fulfilment of network security requirements)*".

4.73. The cost-benefit analysis provided by AQUIND distinguishes the costs and benefits attributed to AQUIND (CAPEX and OPEX for the costs, congestion rent and capacity mechanism in GB for the revenues) from the other costs and benefits of the project.

Table 9 - Net benefits of the project (AQUIND's analysis)

Aquind	France	GB	Rest of Europe
[confidential]	€ 934 million	-€ 949 million	€ 403 million

4.74. The AQUIND Interconnector could deliver substantially positive total SEW impacts for France, driven by the increase in French wholesale prices benefitting energy generators. On the opposite, French consumers would face a welfare reduction as a result of comparatively higher prices in France and lower prices in GB as a result of AQUIND.

4.75. According to AQUIND's analysis, the project could also deliver significant costs for GB. GB consumers could benefit substantially from overall lower wholesale energy prices. However, this in turn could disadvantage domestic energy generators.

4.76. AQUIND also indicates that the AQUIND Interconnector will allow for a more efficient dispatch of generation, thereby contributing to the efficient functioning of the French and British energy markets. This in turn is expected to help reducing carbon emissions considering the expected increase in renewable generation from both countries. AQUIND also considers that the project could deliver positive impacts on network security and system costs such as reduced need for curtailment of generation and ancillary services.

NRA's preliminary analysis

4.77. The variation of the cost of losses induced by the interconnector is described in Section 3. AQUIND's central view estimates an increase of losses by approximately €14 million/year in France and a decrease of losses by about €10 million/year in GB. As detailed in paragraphs 3.87 to 3.91, AQUIND's estimation of grid losses differs from ENTSOE's results because of the methodology used.

4.78. CRE however notes that, as indicated by previous analysis conducted by RTE, the AQUIND Interconnector could have a negative impact on the regulated systems in France by:

- increasing the costs of redispatching and network reinforcements;
- increasing the cost of grid losses;
- Increasing the cost ancillary services.

4.79. Regarding redispatching costs and network reinforcements, they are reduced by the non-firm connection agreement and the expected reinforcements on the GB side. Nevertheless, as explained in paragraph 3.106, the AQUIND Interconnector could have a significant impact on redispatching costs.

4.80. Regarding ancillary services, CRE notes that, as indicated by previous analysis conducted by RTE, the commissioning of AQUIND would likely require additional reserves in France. Indeed, the need for reserves may be correlated to the exchanges with other countries, as it is notably the case for the automatic Frequency Restoration Reserve (aFRR) in France, according to the current sizing methodology. As the commercial flows may change radically from an hour to the other, the TSOs need reserves to adapt to the demand which evolves more slowly.

4.81. Considering RTE analysis, as well as AQUIND's estimates of network losses in France, the NRAs notes that AQUIND may have a negative impact on French consumers in regards to grid tariffs. This should be compared to the benefits of the project. The NRAs note that the project could deliver substantial benefit to French producers and GB consumers, although that could represent a loss for French consumers and GB producers. Therefore, the NRAs notes the French electricity consumers could face an increase in grid tariffs, as described above, as well as an increase in the power production prices.

4.82. For what concerns the GB regulated systems, Ofgem note that the AQUIND interconnector could also have some impacts. However, further consultation with NGESO will be required to fully understand them.

4.83. The NRAs initial view is that the impact of an interconnector on the regulated systems should be considered as part of the CBA analysis. Excluding AQUIND's costs and revenues, the benefits of the project should be higher than the costs induced on the grid tariffs.

Question 16: Do you consider the exemption requested by AQUIND would not be to the detriment of the efficient functioning of the regulated systems to which the interconnector is connected and that it therefore meets test 3 of condition (f)?

Repartition of AQUIND's revenues

4.84. As AQUIND has not requested an exemption on the GB side, the difference in the regulatory regimes has implications on the risks associated to the project and gives importance to the choice of the ratio according to which revenues are split between France and GB.

4.85. AQUIND justifies the choice of a ratio based on the territorial costs of the project by the economic substance of the project, implying it would be the most efficient way to carry out the investment. AQUIND considers it is within the regulators purview to either agree with that proposal or make a different decision.

4.86. According to AQUIND, the proportion of the project that will be situated in French territory (including onshore and in French territorial waters) is 32%. The rest of the costs are situated on the British territory (41%) and located in the marine waters between the two territories (27%). The costs associated to the French exclusive economic zone – about half of the marine waters between the two territories – are associated to the GB part of the project, in order to limit the exemption to the minimum scope that is necessary to allow the investment to happen.

NRA's preliminary analysis

4.87. AQUIND decided to base this ratio on the territorial costs of the project, instead of more common approaches applied by other interconnectors at the border:

- 50-50 split – French and GB consumers face the same loss in congestion rent; as the repartition of the other costs and benefits that will face the grid users are quite uncertain, it could be a fair repartition of costs and revenues.

- Split based on benefits – The country that would profit the most (and respectively the least) from the interconnection could also have more (and respesctively less) interest in covering the costs of the project.

4.88. Moreover, the French exclusive economic zone falls under French jurisdiction, rather than GB's one. In that respect, the costs associated to the French exclusive economic zone should be considered in the exempted portion of the project. This would lead to a 58-42 split of costs and revenues between GB and France.

4.89. CRE notes that the share of the revenues between GB and France proposed by AQUIND reduces furthermore the risk borne by the developers. The more revenues of the project are covered under the regulatory regime, the higher the minimum level of revenues expected by the interconnector would be. The reduced risk to developers could also result in reducing the threshold of the revenues sharing mechanism.

4.90. Besides, the proposed share of the revenues would have an impact on tax revenues. It could also impact the redistribution of revenues with grid users in France and GB, should they be above the revenue sharing thresholds.

4.91. The basis for taxes calculation is proportionate to the costs and revenues. Considering AQUIND's share of revenues, AQUIND would pay more taxes in GB than in France although the tax rate is lower in GB than in France. CRE notes that this repartition therefore leads to lower benefits in France.

4.92. Given the above, the NRAs note in their initial review that the repartition of costs and revenues between the two hosting countries should be more balanced.

Question 17: Do you consider the scope of the exemption, as requested by AQUIND, to be appropriate and necessary to realise the investment? In particular, do you think the repartition of costs and benefits ensures a fair allocation of the risks and revenues between the users of the French and British networks?

Question 18: In your overall assessment, do you consider AQUIND has met all of the exemption conditions and so should be granted an exemption?

Question 19: Do you have any other remarks on AQUIND's exemption request?

4. Appendices

Index

Appendix 1 – Summary of the results of AQUIND's cost-benefit analysis

Table 10 - Results of AQUIND's cost-benefit analysis (€m, NPV 2020 @4%)

		Market Scenario	Low Commodities	High Commodities /Renewables
SEW (excluding AQUIND's costs and revenues)	France	934	1,032	72
	GB	-949	-580	-507
	Rest of Europe	403	-635	941
	Total	387	-183	506
Grid Losses	France	-23	-52	-29
	GB	-165	-158	-108
	Total	-188	-210	-137
SoS Adequacy	France	67	163	30
	GB	155	380	70
	Total	222	543	99
Total costs and benefits (excluding AQUIND's costs and revenues)	France	977	1,143	73
	GB	-959	-357	-545
	Rest of Europe	403	-635	941
	Total	421	151	468

Appendix 2 - Range of values of the SEW results across different studies

Table 11 - Range of values of the SEW results across different studies

Study	Scenario	Capacity without AQUIND (GW)	SEW in 2030	SEW in 2035	SEW in 2040	Unit for SEW
AQUIND	Market Scenario	5,4	140		316	€m 2019
AQUIND	High Commodities/ renewables	6,4	144		381	€m 2019
AQUIND	Low Commodities	4	97		103	€m 2019
TYNDP 2018	Sustainable Transition	6,8	35			€m 2017
TYNDP 2018	Distributed Generation	6,8	26			€m 2017
TYNDP 2018	EUCO	6,8	35			€m 2017
CRE/Artelys 2019	Slow Progress	4	11		14	€m 2019
CRE/Artelys 2019	Sustainable Transition	4	25		38	€m 2019
CRE/Artelys 2019	National Plans	4	197		57	€m 2019
SDDR 2019	PPE	5,4	104	106		€m 2019
SDDR 2019	Ampère	5,4	113	196		€m 2019
SDDR 2019	Volt	5,4	86	135		€m 2019
Ofgem/ Pöyry 2017	Base Case (MA)	6,8	151	134	215	€m 2015
Ofgem/ Pöyry 2017	High scenario (MA)	6,8	198	282	423	€m 2015
Ofgem/ Pöyry 2017	Low scenario (MA)	6,8	15	16	18	€m 2015

Appendix 3 – List of consultation questions

Question 1: Do you have any comments on the methodology adopted by AQUIND to estimate the SEW ?

Question 2: Do you have any comments on the assumptions taken by AQUIND regarding commodity prices, capacity mixes, demand or interconnection capacities?

Question 3: Do you have any comment on AQUIND's estimation of grid losses? Do you have any comments on the differences between AQUIND's and ENTSOE's estimation of these costs?

Question 4: Do you have any comment in regards to AQUIND's estimation of SoS? Do you have any comments on the differences between AQUIND's and ENTSOE's estimation of SoS?

Question 5: Do you consider AQUIND's proposed investment enhances competition in electricity supply and therefore meets condition (a)?

Question 6: Do you consider that the risk attached to AQUIND's project is such that the investment would not take place unless an exemption is granted and that it therefore meets condition (b) Article 63?

Question 7: In particular, do you consider that the other projects in development on the border between France and GB constitute a significant risk for AQUIND?

Question 8: Do you consider that the ineligibility to the Article 12 of the TEN-E Regulation, as well as the absence of a specific regulated market route for private investors under French law, satisfies criterion (b)?

Question 9: Are you favourable to the principle of a revenue sharing mechanism? Do you have any views on the parameter of such mechanism, e.g. the IRR threshold?

Question 10: In your opinion, is there any reason to consider that condition (c) is not fulfilled? If so, why?

Question 11: In your opinion, is there any reason to consider that condition (d) is not fulfilled? If so, why?

Question 12: In your opinion, is there any reason to consider that condition (e) is not fulfilled? If so, why?

Question 13: Do you consider that the Aquind Interconnector is competing with the other projects on the border between France and GB?

Question 14: Do you consider the exemption requested by AQUIND would not be to the detriment of competition and that it therefore meets test 1 of condition (f)?

Question 15: Do you consider the exemption requested by AQUIND would not be to the detriment of the effective functioning of the internal market in electricity and that it therefore meets test 2 of condition (f)?

Question 16: Do you consider the exemption requested by AQUIND would not be to the detriment of the efficient functioning of the regulated systems to which the interconnector is connected and that it therefore meets test 3 of condition (f)?

Question 17: Do you consider the scope of the exemption, as requested by AQUIND, to be appropriate and necessary to realise the investment? In particular, do you think the repartition of costs and benefits ensures a fair allocation of the risks and revenues between the users of the French and British networks?

Question 18: In your overall assessment, do you consider AQUIND has met all of the exemption conditions and so should be granted an exemption?

Question 19: Do you have any other remarks on AQUIND's exemption request?

Appendix 4 – List of documents published alongside this consultation

Document	Name of the document
1	Request for Exemption - Executive Summary and Document Summary
2	Section 3 - AQUIND benefits
3	Section 4 - Project description
4	Section 5 - Exemption request and rationale
5	Section 6 - Exemption criteria
6	Exhibit 1 - AQUIND revenue and social welfare analysis
7	Exhibit 2 - AQUIND competition analysis
8	Exhibit 6 - CION and CION information note
9	Exhibit 10 - Consentec report
10	Exhibit 13 - Summary of local taxation in France
11	Exhibit 14 - Tractebel report
12	AQUIND French network cost summary
13	AQUIND French network losses summary
14	AQUIND response to NRA additional information request
15	Commentaires du rapport Artelys - English version

Schedule 2

Applicant's Request for Exemption (full copy)

Request for Exemption: AQUIND Interconnector

PRIVATE AND CONFIDENTIAL

1 Executive Summary

AQUIND Interconnector is a proposed 2000MW electricity interconnector promoted by AQUIND SAS and AQUIND Limited[1] ("AQUIND") that will connect the GB and French electricity markets. Pursuant to Article 63 of Regulation 2019/943 ("the Regulation"), AQUIND seeks a partial exemption for AQUIND Interconnector in France from Articles 19(2) and 19(3) of the Regulation. Without an exemption the AQUIND Interconnector cannot and will not progress through construction and to commercial operation. This Request for Exemption explains the benefits of the project, the rationale for the exemption, and the specifics of the exemption requested under the Regulation.

Demand for interconnector capacity

Existing interconnector capacity on the GB-France border is currently limited to Interconnexion France-Angleterre (IFA) – although other projects are under construction, including IFA2 and ElecLink. Structural differences in the wholesale electricity prices between the electricity markets in GB and France clearly demonstrate the need for more capacity. Our analysis shows that there is a need for additional capacity between France and GB over and above the three projects listed above.

AQUIND is a private investment that can be delivered without relying on network tariffs in France

AQUIND is developing a privately funded 2000MW interconnector between GB and France. The exempt portion will be wholly funded by investors who are independent from RTE. The full project benefits will therefore be delivered without any funding from French network users and represents further private sector investment in essential infrastructure. This sets AQUIND apart from other possible RTE-led GB-French interconnector projects.

We have already invested nearly €40m in developing the project to the current stage which represents our commitment to this Project and delivering the benefits of AQUIND Interconnector.

AQUIND project benefits

AQUIND will significantly increase the cross-border capacity between GB and France. AQUIND's welfare analysis shows a **total benefit to Europe of over €1.3bn** in the central scenario, including a total benefit to France of approximately €1bn[2].

The structural difference between the GB and French wholesale electricity prices means that AQUIND is projected to flow predominantly from the lower priced French market to GB. In France, **power producers gain** from the export of power to the higher priced GB market. In total, the net welfare benefit of France is positive with the introduction of AQUIND.

All of AQUIND's capacity will be allocated through competitive auctions. Interconnector users will be charged based on the results of the auctions, in line with the prevailing regulations. AQUIND will increase the opportunity for market participants to access the GB and French markets, increasing **competitive pressure** on incumbent market participants.

[1] AQUIND SAS is a company created under the laws of France, R.C.S 808 503 940, registered at: 72 rue de Lessard 76100 Rouen.
AQUIND Limited is a limited liability company under the laws of England and Wales with company number 06681477 and the registered address at OGN House, Hadrian Way, Wallsend, NE28 6HL.

[2] Excluding any benefit from AQUIND

In addition to these benefits, AQUIND is expected to improve the overall **efficiency of generation dispatch** across GB and France, increase security and diversity of supply for both countries, and contribute to a **reduction in overall carbon emissions**.

AQUIND will be developed using HVDC Voltage Source Converter (VSC) technology. Working with the national TSOs, AQUIND will be in a position to offer **system services** to the benefit of both networks.

As an exempt project developer, AQUIND will deliver these benefits without any financial underpinning from French network users for the Exempt Portion. This means that **no French consumer money** will be used to pay for the Exempt Portion of the interconnector.

AQUIND needs an exemption to deliver these benefits

AQUIND is developing the interconnector independently, without partnering with the national TSO, RTE, in France.

AQUIND's Request for Exemption on the Use of Revenues in France follows extensive regulatory engagement with CRE, as well as Ofgem and ACER to consider and test the viability of different investment and regulatory routes for AQUIND Interconnector. The conclusion of these regulatory tests, extensive analysis and formal regulatory decisions is that the only investment route available to AQUIND in France is through an exemption under Article 63.

In particular, we emphasise that there is no other regulated regime for non-RTE interconnection in France. AQUIND has thoroughly examined and tested the option to apply for a regulated regime as defined in the TEN-E Regulation, but this investment route is no longer available to AQUIND. Therefore, the only investment route that will permit AQUIND to continue to develop to project is through an exemption in France.

This means that a regulated regime with financial underpinning is not available to AQUIND in France. The exempt investment route is therefore the only way to deliver the project, and deliver the benefits identified in our analysis and set out in this Request for Exemption.

AQUIND's Request for Exemption is proportionate

AQUIND is requesting an exemption for the portion of the Project that is located in the French territory. This is proportionate, given that the rationale for this Request for Exemption is driven by the inability to progress the Project in France without an exemption.

However, AQUIND Interconnector faces a number of risks associated with the inherent ex-ante uncertainty of future congestion (and other) revenues that the Project will earn over its lifetime. The revenue uncertainty is a common feature of any investment of this type and is a largely unavoidable risk. We recognise that this is a risk that can result in revenues being higher or lower than currently anticipated. In some instances, project risks could result in upside opportunities for AQUIND. AQUIND's proposed profit sharing mechanism will ensure that any additional welfare attributable to the Exempt Portion is appropriately distributed between investors and French consumers.

The project risk justifies an exemption

With no access to financial underpinning in France, AQUIND has to fully manage its own project risk related to the Exempt Portion of the interconnector. AQUIND has demonstrated that the project risks justify an exemption under Article 63 of the Regulation. The key risk to AQUIND is that there is no alternative regulatory arrangement available in France and accordingly the investment will not take

place without an exemption. AQUIND has demonstrated this extensively through testing the viability of potential investment routes with CRE, ACER and Ofgem.

In addition, AQUIND faces specific risks in earning revenues (and incurring costs) that would adequately compensate finance providers for the risk they take on in financing the Project. AQUIND therefore requires, for the Exempt Portion, to have the flexibility to compensate finance providers commensurately, which in turn requires that AQUIND is exempted from the Use of Revenues provisions of Regulation 943/2019. The key revenue and cost risks include: revenue risk, the risk of a reduced or uncertain demand for capacity, GB network curtailment risks, construction and operating risks and policy and macroeconomic risks.

Formal Request for Exemption

AQUIND therefore requests a partial exemption, pursuant to Article 63 of the Regulation, from Articles 19(2) and 19(3) of Regulation 2019/943 (regarding the Use of Revenues) for a period of 25 years from the start of commercial operations. The partial exemption would apply to a fixed share of AQUIND's revenues that corresponds to the proportion of AQUIND Interconnector capital and operational costs related to French territory (onshore and French territorial waters).

In accordance with French national law, an exemption granted under Article 63 of Regulation 2019/943 would also have the effect of permitting AQUIND to operate AQUIND Interconnector in France.

For the avoidance of doubt, AQUIND does not seek an exemption for Unbundling (Article 43, Directive 2019/944), Third Party Access (Article 6, Directive 2019/944) or the approval of charging and access rules (Article 59(7) and 60(1) of Directive 2019/944).

We set out in this document how we meet all of the criteria required for an exemption.

2 Document overview

The details of the exemption are set out in this document, the "Request for Exemption: AQUIND Interconnector".

- **Section 3** sets out the benefits of AQUIND Interconnector
- **Section 4** provides a description of AQUIND Interconnector
- **Section 5** explains the Request for Exemption and rationale
- **Section 6** explains how AQUIND fulfils the relevant exemption criteria set out in Article 63
- **Appendix A** includes a list of definitions

Further detail to support the AQUIND exemption application is provided in the following separate Exhibits:

- **Exhibit 1**: AQUIND revenue and social welfare analysis
- **Exhibit 2**: AQUIND competition analysis
- **Exhibit 3:** AQUIND financial model and sensitivities data file
- **Exhibit 4**: AQUIND CBA data file
- **Exhibit 5**: The Connection and Use of System Code Bilateral Connection Agreement for an interconnector owner at Lovedean 400kV substation Ref: A/AQUIND/15/6306-EN(0) dated 01 June 2016 (the "UK Connection Agreement")
- **Exhibit 6**: CION and CION information note
- **Exhibit 7**: Proposition Technique et Financière (PTF) No 2016-075 Pour Le Raccordement au Reseau Public de Transport D'Electricite de la Nouvelle Interconnexion Derogatoire AQUIND Limited, Conditions Particulieres
- **Exhibit 8**: Technical Feasibility Opinion
- **Exhibit 9**: Summary of project consents and licences
- **Exhibit 10**: Consentec report on the impact of AQUIND on the French transmission system
- **Exhibit 11**: Programme plan and programme risks
- **Exhibit 12**: GB Connection agreement
- **Exhibit 13**: Summary of local taxation in France
- **Exhibit 14**: Tractebel report

Request for Exemption: AQUIND Interconnector

PRIVATE AND CONFIDENTIAL

Copyright

3 Project benefits

3.1 Introduction

This section of the Request for Exemption:

- Explains the benefits that AQUIND Interconnector will deliver; and
- Summarises the analysis used to calculate the project benefits.

The revenue and social welfare analysis, and competition analysis have been included as separate Exhibits:

- **Exhibit 1**: AQUIND revenue and social welfare analysis
- **Exhibit 2**: AQUIND competition analysis.

3.2 Why AQUIND?

AQUIND Interconnector will significantly increase the cross-border capacity between GB and France delivering an additional 2000MW of capacity to the congested GB-French border. The project, which will be owned and operated by AQUIND Limited, will be the largest GB interconnector built since IFA in the 1980s.

Following the departure of the UK from the European Union, AQUIND will represent a continuation of the trend towards closer market integration between GB and mainland Europe and signal the willingness of both the UK and the European Union to continue cooperating for the benefit of their respective citizens. Cross-border interconnection such as AQUIND will still deliver considerable benefits to GB, France and Europe irrespectively of the outcome of the ongoing negotiations between the EU and the UK. [1]

The pipeline of planned GB-French interconnector projects has increased since 2013 following the confirmation of the GB Cap and Floor regime. Through this Request for Exemption, AQUIND will deliver a significant French-GB interconnector capacity and enable greater competition among market participants while limiting its reliance on financial underpinning or consumer support.

Overall, the introduction of AQUIND Interconnector can deliver the following benefits:

- An increase in social welfare for France
- An increase in European social welfare, particularly in EU27 (i.e. excluding the UK).
- Competition benefits, including competition for interconnector capacity.
- Increase in security and diversity of supply for both connecting countries.
- Optimisation of the European generation portfolio (e.g. dispatch of renewables in France and in GB).
- Contribution to meeting national decarbonisation targets through emissions reductions.
- Flexibility and provision of system services to the national TSOs.

Each of the benefits set out above is described in more detail in the following subsections.

[1] The impact of Brexit for GB energy policy, wholesale electricity prices and in particular cross-border trading, does however present a significant uncertainty for AQUIND. This uncertainty creates a risk for AQUIND which is considered in full in Section 6 of this document.

3.2.1 Social welfare benefits

A Cost-Benefit Analysis (CBA) methodology is used to calculate the impact of AQUIND on society, also referred to as "socio-economic welfare" or "SEW". The CBA considers market price projections "with" and "without" AQUIND. The difference between these modelling outcomes reveals the impact that AQUIND has on wholesale market prices in each country. The distribution of socio-economic welfare impacts is split between consumers, producers and interconnectors in GB, France and continental Europe.

The full CBA study has been provided in Exhibit 1 and 4. The main modelling assumptions and SEW results have been summarised below.

3.2.1.1 Modelling scenario overview

An economic market dispatch model is used to project market prices in GB, France and other European countries over the 25-year modelling period. This analysis incorporates three market-based scenarios developed to show a range of market outcomes. The change in market prices in each scenario determines interconnector revenues and welfare. These main scenarios summarised in Table 3-1.

AQUIND has developed a detailed set of assumptions which represent a central view of how European power markets are expected to evolve in the future, referred to as the Market Scenario ("AQUIND Market Scenario"). Compared to the TYNDP 2018 scenarios, we consider that the AQUIND Market Scenario represents a more up-to-date, consistent and comprehensive view of the evolution of European power markets, while maintaining consistency with the base TYNDP assumptions. This scenario forms the basis of the CBA assessment performed by AQUIND.

Table 3-1 Modelling main scenario descriptions

Scenario	Description
AQUIND Market Scenario	▸ A central view on the evolution of the GB, FR and other European power markets. ▸ Under this scenario, Governments continues to pursue a balanced energy policy, attempting to meet and balance the goals of security of supply, competitive market structure and environmental sustainability.
AQUIND High Commodities / Renewables Scenario	▸ High renewables investment is accompanied by high commodity prices and demand across Europe, with the knock on effect of higher gas to oil indexed gas prices and carbon prices relative to the AQUIND Market Scenario. ▸ These factors lead to relatively volatile prices and to increased levels of interconnector investment.
AQUIND Low Commodities Scenario	▸ This represents a scenario with low commodity prices, GDP growth and demand relative to the AQUIND Market Scenario. ▸ Low commodity prices also reduce the running cost of marginal thermal generation with higher capacity margins reducing scarcity, placing downward pressure on wholesale prices across Europe. ▸ Low price volatility and cross-border spreads reduce the returns for interconnectors, therefore reducing interconnector investment compared to the AQUIND Market Scenario.

All three AQUIND scenarios are broadly based on the TYNDP assumptions but build on these assumptions to deliver an economically robust and internally consistent set of scenarios, by applying detailed assumptions and contemporary data.

3.2.1.2 Social welfare summary for AQUIND

The results of the market modelling have been used as inputs to the CBA to estimate the welfare impact of AQUIND Interconnector. The CBA also takes into account non-wholesale market effects, such as Capacity Mechanisms and Ancillary Services. The benefits for France, GB and Europe are presented in Table 3-2. The CBA identifies the distribution of SEW as follows:

- **Producer welfare**: For producers, the CBA quantifies the impact on producer gross margins – the difference between their energy revenues and production costs (production costs include fuel costs, carbon costs and non-fuel variable costs).
- **Consumer welfare**: For consumers, the CBA calculates the impact on wholesale purchase costs of electricity. The change in the purchase costs multiplied by electricity demand shows the total impact on consumer prices in each country.
- **Interconnector welfare**: Net welfare also takes into account the profitability of buying and selling electricity on AQUIND Interconnector itself, the capital and fixed costs of operation of the link, as well as the impact on the profitability of other interconnectors that are expected to be operational in GB and France by 2023.[2]

[2] A number of new GB interconnectors will be subject to Ofgem's Cap and Floor regime. We have not modelled possible individual project cap and floor levels as part of the calculation of interconnector welfare as the project cost information, and therefore cap and floor levels, are unknown. The impact of AQUIND on interconnectors that plan to commission ahead of AQUIND is taken into account in the CBA.

The total net social welfare for GB and France combined, is strongly positive in the AQUIND Market Scenario and in the AQUIND High Commodities/Renewables scenario. The sustained premium in GB prices compared to French prices over the exemption period, drives a large volume of interconnector flows from the lower priced French market to GB. In France the impact of these flows pulls up the wholesale price to the benefit of French producers. As a result, producers receive a higher price, but French consumers would pay more for electricity. The net impact **in France is a net total social welfare benefit across all three scenarios.**

Table 3-2 Social welfare results – France, GB and Europe

€m NPV @ 4.0%, real 2018		AQUIND Market Scenario	AQUIND Low Commodities Scenario	AQUIND High Commodities / Renewables Scenario
GB welfare	Net producer welfare	-€ 2,136	-€ 3,842	-€ 3,068
	Net consumer welfare	€ 2,275	€ 4,032	€ 3,826
	Net interconnector welfare	-€ 1,088	-€ 770	-€ 1,265
	Net social welfare	**-€ 949**	**-€ 580**	**-€ 507**
French welfare	Net producer welfare	€ 4,418	€ 8,220	€ 2,023
	Net consumer welfare	-€ 2,092	-€ 5,735	-€ 598
	Net interconnector welfare	-€ 1,392	-€ 1,453	-€ 1,353
	Net social welfare	**€ 934**	**€ 1,032**	**€ 72**
Impact on other European Countries	Net producer welfare	€ 2,506	€ 5,070	-€ 3,040
	Net consumer welfare	-€ 1,040	-€ 4,627	€ 4,858
	Net interconnector welfare	-€ 1,064	-€ 1,078	-€ 878
	Net social welfare	**€ 403**	**-€ 635**	**€ 941**
AQUIND	Revenues	[redacted]	[redacted]	[redacted]
	Costs	-€ 1,305	-€ 1,305	-€ 1,305
	Net AQUIND welfare	[redacted]	[redacted]	[redacted]
Variation in Grid losses	FR losses	-€ 23	-€ 52	-€ 29
	GB losses	-€ 165	-€ 158	-€ 108
	Total losses	**-€ 188**	**-€ 210**	**-€ 137**
Security of Supply (EENS)	**Total**	€ 222	€ 543	€ 99
Total European welfare	**Including AQUIND**	[redacted]	[redacted]	[redacted]
Total European Welfare	**Excluding AQUIND**	**€ 421**	**€ 151**	**€ 468**

In the Low Commodities scenario, the impact of the removal of the CPS in GB, plus lower levels of investment in renewables, reduces the wholesale prices in GB and France compared to the AQUIND Market Scenario. Combined with greater competition in wholesale markets, this leads to less scarcity and AQUIND's benefit to society is therefore reduced, but it remains positive.

The CBA presented in this application shows a range of welfare results which are determined by the underlying assumptions in the modelled scenarios. There are also wider benefits of AQUIND interconnector for GB and France which are not quantified in the CBA (for example security of supply benefits and benefits to the TSOs in France and GB. These benefits, and the underlying assumptions, are explained in full in Exhibit 1.

Other interconnector projects on the France-GB border reduce AQUIND's expected arbitrage revenues. The high volume of interconnector capacity assumed in the AQUIND High Commodities/Renewables Scenario results in lower interconnector welfare. This is because the cannibalisation of both AQUIND revenues by other interconnectors, and vice-versa, is greater in this scenario than in the AQUIND Market Scenario.

For AQUIND, the impact of other interconnectors presents a significant project revenue risk. In respect of the share of AQUIND's congestion revenues that will be subject to the exemption, AQUIND will not have access to any financial underpinning through a regulated regime in France, facing the full project downside risk in respect of the Project's Exempt Portion. This is explained in full in Section 6.

3.2.1.3 CBA result and AQUIND's commissioning date

The CBA analysis was completed over a 25 year period from 2024 to 2048 (both inclusive). AQUIND's exact commissioning date will depend on progress against the programme plan, as explained in Section 4 and Exhibit 11. The social welfare impact of a change to the commissioning date, for example by delaying the project/CBA start and end date by one year, is expected to be small. This is because the small year-on year change in the GB and French price profile, as identified in Exhibit 1.

3.2.2 Grid losses

In this Request for Exemption we have estimated the impact of AQUIND Interconnector on the reduction in thermal losses on the transmission networks in France and in GB, based on calculations performed by a technical consultancy, Tractebel. The methodology for the calculation of variation in grid losses is consistent with the approach suggested in TYNDP 2018. The estimate is developed using a regional transmission grid model, calculating the hourly flows with and without the Project. This is then monetised based on the marginal costs as given by the market simulations.

Alongside the initial work undertaken by Tractebel, we have undertaken additional analysis to better align the modelling undertaken by Baringa and Tractebel. In particular, this post-processing exercise uses the flows across AQUIND Interconnector as a proxy for the total system losses generated by AQUIND in GB, France and across Europe. Whilst we recognise that this is a simplification of the losses analysis, which is a very complex piece of modelling, we consider it an appropriate step to better align the Tractebel and Baringa analysis. We expect that this step to better align the analysis improved the consistency of the SEW and losses analysis giving a more accurate CBA result.

The post-processing started by comparing the 2030 flows across the GB-France border, with AQUIND, in both the Baringa and Tractebel analysis. Our analysis showed that Baringa projected 64% of the annual flows of Tractebel. All else being equal, lower flows across the border would result in lower system losses (in the case of France) and a lower reduction in system losses (in the case of GB). Applying the same methodology to the AQUIND Low Commodities and High Commodities/Renewables scenarios gave results of 68% and 49% respectively.

Applying these scalars to the NPV of total losses used in the CBA gives a more consistent view of the losses from the AQUIND scenarios.

Table 3-3 Monetised value of the variation in grid losses resulting from AQUIND

€m NPV @ 4.0%, real 2018	AQUIND Market Scenario	AQUIND Low Commodities	AQUIND High Commodities / Renewables
Original analysis (as presented in the Investment and CBCA Request equation 3.0)			
Variation in losses, France	-€ 36	-€ 60	-€ 76

Variation in losses, GB	€ 258	-€ 221	-€ 232
Total losses	**-€ 294**	**-€ 280**	**-€ 308**
SCALED analysis			
Variation in losses, France	-€ 23	-€ 29	-€ 52
Variation in losses, GB	-€ 165	-€ 108	-€ 158
Total losses	**-€ 188**	**-€ 137**	**-€ 210**

As AQUIND's SEW estimates include the impact of losses on the Project itself, and other GB/EU interconnectors[3], the estimates above exclude the estimates of losses on the Project and other GB links, to avoid double counting.

The monetised grid losses in the table above are negative when the impact of AQUIND on variation in grid losses represents a net cost, and are positive when the impact represents a net benefit. The monetised impact of the variation in grid losses in GB is a net positive value, due to the impact of the Project on marginal cost more than offsetting an increase in net losses. These estimates do not include the impact of grid losses on AQUIND Interconnector or other GB/EU interconnectors, which are monetised as a cost through AQUIND's approach to SEW estimates.

3.2.3 Competition

Interconnection enables cross-border electricity flows, providing market participants access to connecting markets and increasing the size of the energy markets. This allows participation from a larger number of market participants and can allow new entrants, placing competitive pressure on incumbents.

AQUIND Interconnector will provide an additional 2000MW of tradeable capacity across the congested GB-France border. The capacity will be made available to all market participants under the relevant trading arrangements as determined by the regulations in place.

At a macro level, AQUIND Interconnector will increase competition in Europe by creating new opportunities for cross-border trade. This will increase liquidity and, the opportunity to trade across a larger market, should displace more expensive generation in the importing market leading to price convergence.

Two competition metrics have been used to ensure that AQUIND will not increase market concentration or instances of pivotality in GB or France. Pivotality has been measured through the Residual Supplier Index (RSI), and market concentration, measured through the Herfindahl-Hirschman Index (HHI), as explained in the following paragraphs.

3.2.3.1 Residual Supplier Index analysis (RSI)

The RSI analysis considers whether AQUIND will increase the ability of the largest energy suppliers in GB and France to significantly influence market prices. This is an assessment of pivotality. The analysis focuses on the position of EDF Energy in GB and Électricité de France in France, as the largest suppliers in both markets.

[3] Technical line losses are an input to the modelling in Plexos.

The analysis shows that the introduction of AQUIND Interconnector will not increase the opportunities for EDF to influence market prices in GB or France. The introduction of AQUIND marginally reduces the number of hours in the modelled years where EDF is the pivotal supplier.

3.2.3.2 Herfindahl-Hirschman Index (HHI)

This simple HHI assessment considers the impact of AQUIND on generation market share in GB and France. The size of AQUIND Interconnector compared to the generation market in GB and France means that AQUIND's impact is measured to be small. As the interconnector capacity is competitively allocated to a range of market participants, the analysis shows that AQUIND will not increase concentration in GB or France.

3.2.4 Security and diversity of supply

AQUIND Interconnector will provide a reliable alternative source of electricity for GB and French consumer and network users over its operational life. The nature of interconnection technology is such that AQUIND is projected to achieve over 98% availability over the exemption period, significantly higher than most conventional thermal assets.

The security of supply benefit provided by AQUIND Interconnector will be rewarded through participation in the GB and French capacity markets and result in possible deferred/avoided generation investment or a decrease in the probability of unserved energy. The differences in the GB and French generation mix will ensure that AQUIND provides a degree of diversification for both GB and France.

3.2.4.1 Capacity market participation

The GB CM will directly compensate AQUIND for the de-rated capacity that it provides at times of system stress. The de-rating factor will be calculated based on AQUIND's technical reliability and the extent to which AQUIND will import into GB during a system stress event in that country. In GB, the de-rating factor will be determined by the Government and National Grid through the AQUIND de-rating factor. Whilst the precise details of the French CM are not available, we anticipate a similar approach. [4]

AQUIND will be remunerated through the GB CM, with the outturn payments based on the direction and volume of interconnector flows during periods of system stress.

The European Clean Energy Package[5] envisages a move towards direct cross-border participation of generators in Capacity Mechanisms in Europe. While the specifics have not yet been established, we assume that interconnectors will continue to be able to capture the value they create by increasing cross-border capacity (regardless of whether interconnectors or foreign capacity participate in the Capacity Mechanisms).

3.2.4.2 Opportunity for deferred generation investment

AQUIND Interconnector's participation in the GB CM, and expected participation in the French CM may result in deferred or avoided investment decisions for other domestic generation assets. In this instance, by participating in the CM, AQUIND Interconnector would be relied upon to meet GB security

[4] The approach to de-rating in France is yet to be established. For the revenue analysis presented in this Request for Exemption, a proxy has been used based on the de-rating factors published for existing or planned GB-FR interconnectors.

[5] Regulation (EU) 2019/943.

of supply. As a price-taker in the GB CM auction, AQUIND would push other more expensive marginal generation out of the CM auction. For the same security standard, AQUIND would reduce the cost of capacity in the GB CM. We anticipate the same principle will apply to the French CM.

3.2.4.3 Reduction in unserved energy

AQUIND may alternatively provide a benefit to GB or France in the form of a reduction in unserved energy. In this instance, the introduction of AQUIND would increase the GB or French security standard. This would reduce the probability of unserved energy in the market. This benefit is not captured in the CM itself. It may therefore represent an additional security of supply benefit attributable to AQUIND that has not been quantified in the economic modelling. [6]

The additional benefit provided by AQUIND through either deferred generation investment or a reduction in unserved energy are mutually exclusive. The precise additional benefit will depend on the extent to which AQUIND is relied upon to meet the national security standards in GB and France.

3.2.5 Optimisation of the European generation portfolio

AQUIND Interconnector will double the current GB-FR capacity and provide a >30% increase in capacity when other planned links (1 GW ElecLink, 1 GW IFA and 1.4GW of either GridLink or FABLink) are taken into account. The French electricity market is already well connected to other central European Member States. The large structural difference in the electricity prices in GB and France provides a clear signal for further interconnection to facilitate efficient cross-border trade and GB-French, as well as wider European, price convergence.

AQUIND will provide an opportunity for the efficient dispatch of renewables in GB, France and across connected markets. As renewable investment increases in GB and France, the probability of curtailment of intermittent generation also increases. The additional cross-border capacity provided by AQUIND offers the opportunity to export this additional power during periods of high renewable generation.

In the AQUIND Market Scenario, the Project is estimated to increase renewable generation across Europe by 6.2TWh over the modelling period.

3.2.6 Emissions reduction

Similar to the benefits of RES integration, our detailed power market modelling shows that carbon dioxide emissions fall overall with the introduction of AQUIND.

In the AQUIND Market Scenario, the Project is estimated to reduce CO_2 emissions across Europe by 2.8 $MtCO_2$ over the modelling period.

3.2.7 Flexibility and system services

AQUIND will use VSC technology and therefore be in a position to provide a range of ancillary services to the national TSOs, National Grid and RTE, to improve flexibility in real time trading timeframes (further detail is provided in Section 4). This may include the provision of mandatory and commercial ancillary services (for example voltage control, frequency control and black start capability services)

[6] In theory, this could be calculated by considering the change in expected unserved energy at different de-rated capacity margin. The assumed reduction in unserved energy as a result of AQUIND, multiplied by the value of lost load (VoLL) would provide an estimate of the benefit from a reduction in expected unserved energy.

and for emergency assistance and cross-border balancing. Some of these ancillary services will be provided voluntarily based on publicly tendered commercial agreements with National Grid, further enhancing the competition in this market for the benefit of National Grid users. Similarly in France, AQUIND may provide frequency and voltage ancillary services to RTE.

AQUIND will also be able to provide emergency assistance to both National Grid and RTE. AQUIND is in discussions with National Grid in relation to mandatory and commercial ancillary services National Grid might require. AQUIND will engage in similar discussions with RTE as the project development process progresses.

In addition to more competitively priced ancillary services, AQUIND will have the potential to earn revenue from ancillary services markets. This may in turn result in welfare transfers to network users in case the revenues exceed a pre-defined threshold[7] and would be, partially, shared out by AQUIND.

As part of a consultation with the TSOs undertaken in Summer 2019, we have sought views from National Grid and RTE on the most recent valuation of the benefits that AQUIND Interconnector is expected to provide from an ancillary services perspective, but neither of them have been able to provide a quantitative estimate at this stage. We will keep the NRAs updated on any further information available from the TSOs over the course of the Project's development.

3.3 Local benefits

In France, AQUIND's converter station and its compound and associated infrastructure will be subject to a number of taxes that arise from the fact of owning such physical assets and, in the case of IFER, additional taxes relate specifically to electricity transmission installations. AQUIND has obtained tax advice in respect of those taxes, but at this stage, any estimate of taxes is provisional.

The taxes are distributed locally, between a local commune, a Terroir de Caux, Department (Seine-Maritime) and Normandy region in different proportions, depending on the tax and the exact location of the installation, as well as regional regulations. The level of tax rates of the real estate tax and CFE also differs depending on the commune.

AQUIND's tax contributions represent a significant public benefit in these regions. Additionally, AQUIND's local investment in the region facilitates the creation of more tax revenues in locations that are involved in significant developments.

Exhibit 13 provides our estimate of AQUIND's contribution to local tax revenues if the converter station is located in one of the three communes immediately adjacent to the Barnabos switching station in the commune of Varneville-Bretteville. AQUIND estimates this tax contribution will be approximatley €4.6m per year. According to the approved stakeholder engagement strategy, AQUIND cannot at this moment make a public announcement in respect of the exact siting of the converter station within the communes identified above, but we aim to announce that in the near future.

[7] For example, ElecLink's exemption features an upside sharing mechanism above a pre-defined level of Internal Rate of Return for the project.

Request for Exemption: AQUIND Interconnector

PRIVATE AND CONFIDENTIAL

Copyright

4 Project description

4.1 Introduction

This section of the Request for Exemption:

- Introduces the AQUIND project promoters.
- Provides a technical description of the Project.
- Summarises the project ownership and commercial arrangements, including the proposed financing structure and the supply chain strategy.
- Sets out the project plan and timelines.

4.2 AQUIND Interconnector project developers

AQUIND Interconnector is being promoted by AQUIND SAS (France) and AQUIND Limited (UK) and their 100% holding company AQUIND Energy Sarl in Luxembourg – referred to throughout this document as "AQUIND". AQUIND has been actively working with a range of parties to develop the Project since 2014 and is supported throughout by a delivery focussed and committed project team. AQUIND is not affiliated with any other business involved in production, transmission, distribution or sales of either electricity or gas in any of the Member States or states – members of the European Economic Area ("EEA"). The development of AQUIND Interconnector is the sole business of AQUIND.

The project team has previous experience in the energy sector, including oil and gas and offshore engineering, construction and procurement. AQUIND has selected a group of experienced specialist advisors to assist its core management team including consultant engineers (WSP), economic and policy advisors (Baringa, FTI), legal advisors (Herbert Smith Freehills), network/system modelling advisors (Consentec and Tractebel), and planning and land experts both in England (WSP, Natural Power) and France (Arcadis, Natural Power).

4.3 Technical description

This section sets out a summary of the technical specification and planned connection locations of AQUIND Interconnector in both GB and France, along with the rationale behind the choice of technology, the map of the planned route, as well as information on the technical losses and project lifetime.

AQUIND has undertaken detailed technical analysis to ensure the project is technically feasible. This has included extensive engagement with the national TSOs, NGET and RTE, to ensure appropriate sizing and location of the connections to the national transmission systems. Throughout the project, AQUIND has been advised by leading technical advisors. A full technical overview of the project and key technical decisions has been provided in *Exhibit 8*, and is summarised in this section of the Request for Exemption.

Figure 4-1 Overview and key components of AQUIND Interconnector

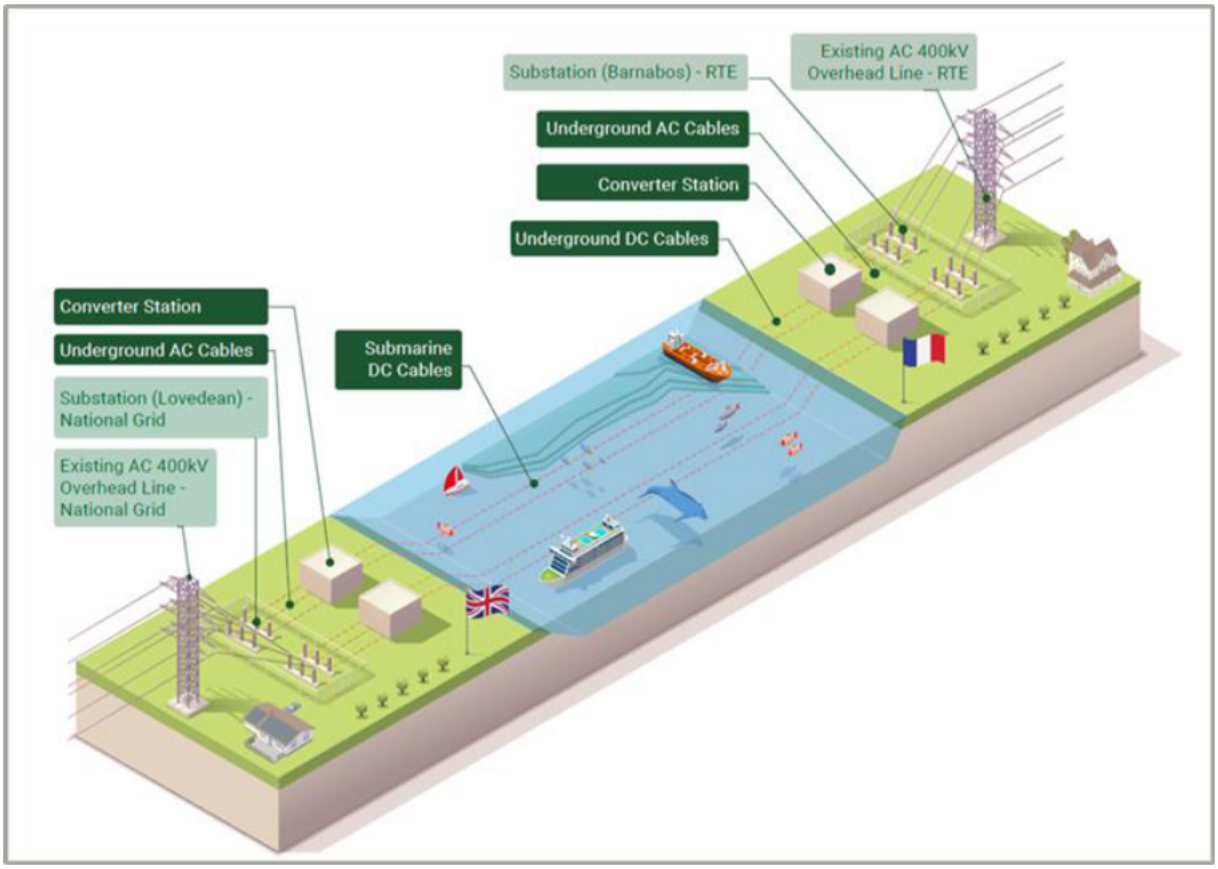


Table 4-1 summarises the key technical characteristics (both onshore and offshore) of AQUIND Interconnector.

Table 4-1 Summary of AQUIND project characteristics

Project characteristic	
Transmission cables	▸ Capacity: 2,000 MW (net of losses) ▸ Configuration: two independent symmetrical monopole HVDC links ▸ DC voltage: 320kV ▸ AC voltage: 400kV in both France and GB ▸ Technology: XLPE
Routing	▸ Approximate submarine HVDC cable route: 182km (landfalls at Eastney and Pourville) ▸ Approximate HVDC cable route in France: 36km (landfall to converter stations) ▸ Approximate HVDC cable route in the UK: 20km (landfall to converter stations) ▸ Approximate HVAC cable route: <3km (converter stations to TSO substations at Lovedean and Barnabos).[1]

[1] The HVAC cable from AQUIND Converter Station (G.RUE) to the RTE switching station Barnabos (≤ 2 km) will be installed and maintained by RTE. This is because the French Energy Code, Articles L. 121-4 and L. 321-6, entrust the development, construction and operation of interconnectors solely with RTE.

Converter stations	▸ Two converter stations (GB and France), access road to each, and ancillary infrastructure ▸ Rating: 2,075 MW ▸ Technology: VSC (Voltage Source Converter)
System availability	▸ Based on the dual monopole topology of the scheme and associated length of DC and AC cables the system availability is expected to be 98%. Further information can be found in Exhibit 8 – AQUIND Feasibility Opinion.
Additional features	▸ Telecommunications: Fibre optic data transmission cables (one per circuit) and ancillary infrastructure at the converter stations and the landfall (GB and France) ▸ Lifetime: assumed lifetime of 25 years (technical lifetime >40 years)

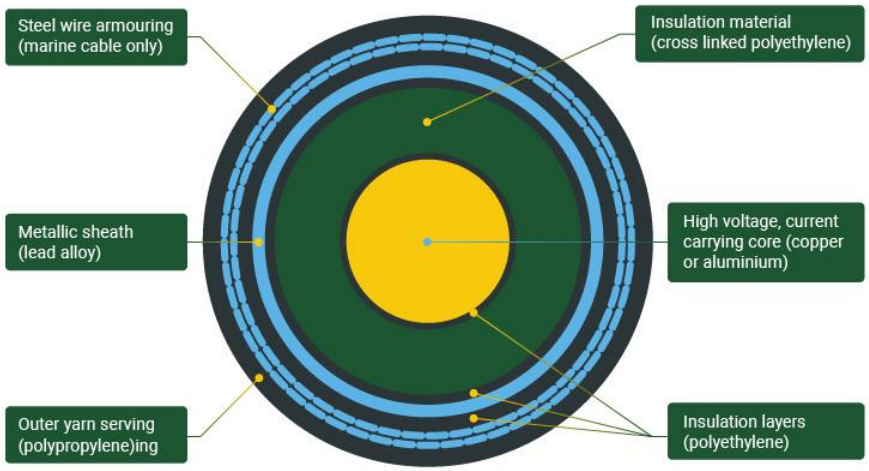
4.3.1 Cables

4.3.1.1 Cable description

Both the AC and DC cables will be polymerically insulated using cross linked polyethylene (XLPE) with either copper or aluminium.

XLPE cables are the leading high voltage cable technology. They are solid-type cables that do not contain gases like gas insulated cables or liquids like mass impregnated cables. This means that there is no risk of leaking such gases or liquids into the environment. It is generally recognised that XLPE cables are inert to the environment and this technology has the least environmental impact among commercially available high voltage cable technologies.

Figure 4-2 AQUIND Interconnector XLPE cable

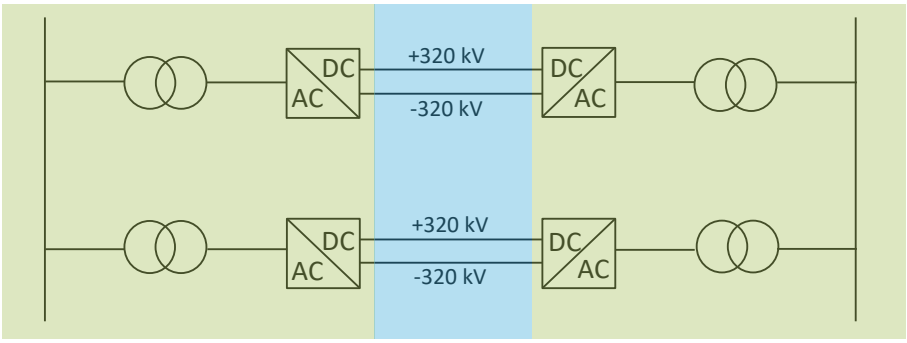


4.3.1.2 Choice of cable capacity and configuration

AQUIND Interconnector will comprise two independent symmetrical monopole HVDC links (“poles”), as shown in Figure 4-3 below. This is to ensure that no single fault results in a complete loss of the capacity. The two symmetrical monopoles will be fully self-sufficient in terms of control systems, protection systems, auxiliary power supplies and cooling systems providing redundancy to the system.

Each pole will have the export capacity of 1037.5MW and the import capacity of around 1000MW, net of transmission and conversions losses, which are described in more detail in Section 4.3.4. Such an arrangement provides at least 50% power availability under all credible scenarios, as the two poles are designed to be completely electrically independent, with no overlapping equipment or services. Throughout this document, the Project's capacity is referred to as 2000MW.

Figure 4-3 AQUIND symmetrical monopole design



RTE 400kV bus
(Barnabos)

National Grid 400kV bus
(Lovedean)

The selection of the project capacity was made based on the market assessment together with technological and grid constraints appraisal in France and the UK. There are limitations imposed by the national TSOs based on the size of any individual block of power that the AC network can accommodate should there be a sudden loss of that power. These are defined as infeed-loss limits. For AQUIND the limiting factor is the island GB transmission system, which can withstand a 1320MW power loss on a routine basis (up to several time per year), and up to 1800MW loss on a less frequent basis.[2] The limitations on the larger continental synchronous grid are much higher.

During the feasibility phase in 2015 AQUIND considered the option to build a 1320MW monopole, or two 1320MW monopoles or an 1800MW bi-pole. Early discussions with manufacturers indicated challenges with this cable size, suggesting that each of these solutions would require cutting edge and untested designs to achieve the required transmitted power and DC voltage. The only currently operational interconnector between GB and France (IFA) also has a capacity of 2,000MW, which includes 2 sets of 2 cables (bi-poles) of 500 MW each.

AQUIND Interconnector ultimately selected a twin symmetrical monopole configuration over a bi-pole due to better supply chain readiness and the present technology level. A detailed assessment of the technology choice is provided in Exhibit 8 of this Request for Exemption (AQUIND Feasibility Opinion).

4.3.1.3 Choice of cable voltage

AQUIND has selected a DC voltage of 320kV, which, at the time of the decision, represents 'state of the art' VSC technology. It also represents the highest commercially available voltage for XLPE cables. All major manufacturers of HVDC equipment had projects in construction or operation of this power/voltage class and were therefore comfortable to support the AQUIND scheme at this level.

[2] These limits are defined in National Grid Electricity Transmission Security and Quality of Supply Standard, (SQSS), Issue 2.2, dated 5th March 2012. This defines normal infeed loss risk as 1320MW and infrequent infeed loss risk as 1800MW. Both limits became active in April 2014.

4.3.1.4 *Cable route*

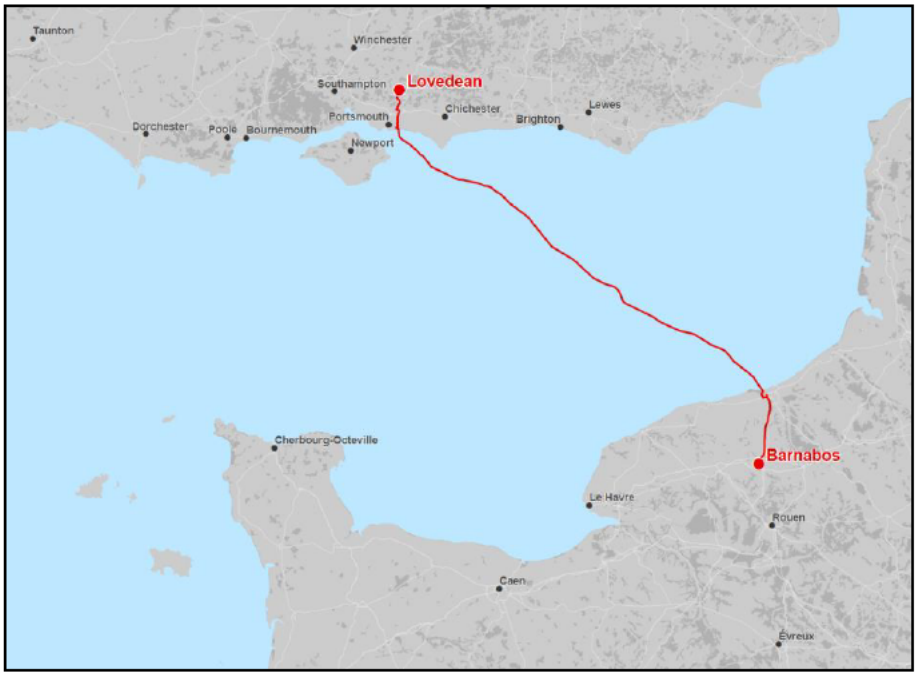
Underground HVDC cables will connect each converter station to the coast, between which a submarine HVDC cable will run from Eastney in Portsmouth, Southern England, to Pourville in Normandie. The converter stations will be connected to their respective substations by HVAC cables. The breakdown of the cable route is set out in Table 4-2.

Table 4-2 Breakdown of cable route

Route	Approximate Cable Route Length	Cable type
Barnabos 400kV switching station to French converter station	<2 km	AC
French Converter station to Pourville	36 km	DC
Submarine cable	182 km	DC
Eastney to UK converter station	20 km	DC
Converter station to NG 400 kV sub-station	<1 km	AC
Total	**240km**	

The planned route for AQUIND Interconnector is shown in Figure 4

Figure 4-4 Indicative cable route



AQUIND carried out detailed environmental impact assessments of all elements of the cable route, which are now under consideration by the National Planning Inspectorate in the UK and relevant authorities in Normandy. The following subsections set out the approach to installing the subsea and terrestrial cables.

4.3.1.5 Marine Cable installation

The design and installation of marine cables is not only focussed on delivering the required power but also on reducing the risk of damage from the sea environment and anchors. To reduce environmental risks, XLPE technology has been selected. To reduce the risk of physical damage the marine cables are designed with steel wire armour surrounding the internal parts of the cable.

Further risk mitigation measures include burying the cable within trenches excavated into the sea floor. Where the cable cannot be buried due to trenches not being able to be excavated, the cable will require protection with the installation of concrete mattresses or rock placement over the cables.

Cable installation will be undertaken by purpose-built vessels which carry many kilometres of cable. The cable is stored on the vessel within a carousel which unreels the cables for laying onto the sea floor. Remotely operated underwater vehicles (ROV) then install the cable into excavated trenches, or if trenching is not possible, cover the cables with protective concrete mattresses or rock.[3]

In 2017-2018, a specialist marine survey company MMT undertook, on behalf of AQUIND, an offshore geophysical and geotechnical survey campaign that confirmed feasibility of the proposed marine cable route. The conclusions of the report have been previously made available to CRE and Ofgem.

4.3.1.6 Terrestrial cable installation

A cable supplier selected by AQUIND via a competitive tendering process will be responsible for the installation of terrestrial DC cables which will run between the converter stations and the landing point. AQUIND will aim, where possible, to install terrestrial DC cables within roads or on road verge in order to avoid and/or minimise environmental impact. At the landing points and other locations where required, the Horizontal Direct Drilling technique will be utilised.

In GB, for the AC connection between the converter and Lovedean substation, there will be two AC cables circuits, each comprising three cables. Consequently, these cables will require a wider corridor than the DC cable and will mostly be installed through private lands. The AC cable route length will be minimised as far as practicable. In GB, design, installation and maintenance of the AC cables will be performed by the National Grid at the cost to the Project Promoter.

In France, design, installation and maintenance of the AC cables will be performed by RTE at the cost of the Project Promoter.

4.3.2 Converter stations

4.3.2.1 Choice of HVDC technology and converter stations

AQUIND Interconnector will use Voltage Sourced Converter HVDC technology to connect the French and GB transmission systems.

HVDC technology provides a number of advantages compared to AC technology. It has much lower cable losses over a long distance and requires fewer cables for an equivalent power.

[3] Cable damage during installation might call for expensive and time-consuming repair operations, during which the damaged pole(s) will be unavailable to the market. Once installed typical hazards to cables may be man-made (such as damage from fishing gear, ships anchors, dredging and dumping activity, impact of existing or new cables and pipelines, military activity or oil and gas exploration or production activities, etc) or natural such as erosion and sedimentation, hard substrates, sediment mobility and high current regimes.

However, as both transmission networks use conventional Alternating Current (AC) technology, the Project will require the construction of two HVDC converter stations in order to convert AC to DC and vice-versa at the remote ends. One converter station will be in England, within 1km of National Grid's Lovedean substation, and the second will be in France, less than 2km from RTE's Barnabos switching station.

4.3.2.2 Choice of VSC technology

There are two commonly used variants of HVDC technology: Line Commutate Converter (LCC) and Voltage Source Converter (VSC) technology. AQUIND Interconnector has chosen the VSC technology, due to a number of technical advantages over LCC, including lower harmonic emissions, black start capability and a reduction in the site footprint requirement. The VSC technology typically allows very rapid change of flow and direction as well as reactive power, which is valuable to system operators when managing grid stability. VSC is also currently the preferred HVDC technology for applications in Europe.

VSC technology will enable AQUIND Interconnector to provide voltage control, frequency control and black start capability services to both National Grid and RTE. Provision of these ancillary services can help strengthen the quality and security of supply of both networks.

AQUIND does not anticipate that revenues arising from the provision of ancillary services will be material in the context of its overall revenues from AQUIND Interconnector. AQUIND is in discussions with National Grid and RTE in relation to mandatory and commercial ancillary services the TSOs might require, and the future commercial arrangements for providing such services.

AQUIND previously sought views from National Grid and RTE on the most recent valuation of the benefits that AQUIND is expected to provide from an ancillary services perspective, but neither of the two TSOs were able to provide any quantitative estimates of the potential value of ancillary services.

A detailed assessment of the technology choice is provided in Exhibit 8 of this exemption Request (AQUIND Feasibility Opinion).

4.3.3 Sub-station connections

4.3.3.1 Grid connection

Due to the large connection size of 2075MW, AQUIND Interconnector will connect at the highest available voltage level, which is 400kV in both countries.

In France, AQUIND signed a technical and financial connection proposal (*Proposition Technique et financière* or "PTF") with RTE on 06 March 2017 for a connection to the Public Transmission Network with a maximum import capacity of 2000MW and a maximum export capacity of 2075MW. The PTF is conditional on the grant of an exemption (as requested in this document) and no alternative grid connection route for independent non-RTE interconnectors currently exists in France.

In GB, AQUIND accepted National Grid Electricity Transmission's "non-firm" 2000MW connection offer for either import or export scenarios in June 2016. In March 2018 AQUIND signed a Modification Offer with National Grid to adjust the total UK export capacity to 2075MW to ensure that the transmission loss adjusted import capacity of the interconnector is the same in both directions.

National Grid will undertake connection works at their Lovedean substation, including building two new bays for AQUIND and reinforcement works within the Transmission system. National Grid will also

build two AC cable circuits between Lovedean substation and AQUIND converter station and will carry out operation and maintenance support of the GB AC connection throughout the project life. The cost of these works as well as the operational and maintenance costs in respect of the GB AC connection will be paid by AQUIND.

AQUIND is in the process of discussing a further modification to its connection agreement to take into the proposal of the National Grid to carry out the construction works in respect of the GB AC connection.

During the non-firm offer period National Grid may curtail AQUIND Interconnector due to planned and unplanned outages in certain parts of the grid without financial compensation. The curtailment of AQUIND in GB due to the planned outages can only occur between April and September and the level of curtailment will be known once such outages are scheduled by the National Grid. Based on historical average circuit date and the estimated time circuits may be out of service due to non-scheduled outages (faults) National Grid has calculated the probability of forced outages of AQUIND Interconnector due to unplanned faults to be [redacted] **hours per year which is around 0 [redacted]% per year**. National Grid may perform further assessments of the probability of forced outages as part of their routine procedures.

4.3.3.2 Barnabos Substation

Following feasibility studies conducted by RTE in 2016 and initial landfall/cable route desktop studies, Barnabos 400 kV switching station was identified as the preferred point of connection to the French transmission network. Other connection locations (Penly substation, Le Havre substation, new substation on Havre – Rougemontier) were discounted because of constraints on the surrounding electrical network, technical and environmental constraints, and considerably longer DC cable route options.

As a result, AQUIND will connect into the Barnabos 400 kV substation in Haute Normandie. RTE will construct two new 400 kV bays to accommodate connections from the French AQUIND converter station.

- In March 2017, AQUIND signed a Technical and Financial Proposal (PTF) with RTE for the connection to Barnabos switching station.
- In July 2018, WSP completed initial converter station optioneering report which identified land opposite Barnabos switching station as a preferred location for the converter station.

The connections will be made using relatively short lengths of AC underground cables. RTE will construct these cables (which will terminate inside the AQUIND converter station), as well as connection bus bars at AQUIND's substation, and carry out all necessary works and improvements at Barnabos substation. The costs of this work will be paid by AQUIND. No wider reinforcements of the French grid are envisaged by RTE to accommodate the connection.

4.3.3.3 Lovedean Substation

The choice of the connection point in GB has been informed by a bespoke feasibility study produced in 2015 by the GB TSO, National Grid Electricity Transmission ("NGET"). This study identified potential connection locations to the GB electricity transmission grid as well as the associated constraints and cost. NGET identified only two practically possible connection locations out of the assessed existing 400 kV substations on the South Coast of England – Lovedean and Bramley. Following a further assessment, National Grid's cost-benefit analysis showed that the most optimal scenario was for an interconnector with a capacity of 2,000MW connecting to Lovedean substation. It demonstrated that

from a cost perspective and to utilise efficiently available connection points on the South Coast of England, a connection at a higher capacity is preferred. This formed the basis for the formal Connection and Infrastructure Options Note, that identified Lovedean as the preferred connection option.

In April 2016, AQUIND conducted a preliminary Converter Station site identification exercise. Potential Converter Station site locations were identified by placing the existing Lovedean substation at the centre of an optioneering exercise. In 2017 AQUIND conducted further detailed assessments to ensure the technical viability of siting the Converter Station in or around the proposed Converter Station Area. Based on this analysis, two suitable locations were identified: South-west of Lovedean substation (Option A) and West of Lovedean substation and between the existing 400 kV overhead line circuits (Option B). In H2 2017, AQUIND conducted a desktop study to inform the environmental constraints for both options and consulted with the Local Planning Authorities. In 2018, based on the analysis and assessment undertaken for both Converter Station options and following the input from the LPAs, Option B was identified as the preferred option.

To accommodate the full capacity of the Interconnector under all conditions mandated by the Security and Quality of Supply Standards (SQSS), National Grid must undertake reinforcement works within the 400 kV AC network. Until these reinforcement works are completed in Q4 2029, the connection offer is considered “non-firm”, meaning the System Operator can constrain AQUIND Interconnector with no compensatory payments. The frequency, duration and severity of constraints will be subject to a number of variables over which AQUIND has no control, such as the level of generation on the system and outages on transmission circuits.

4.3.4 Technical Losses

The transmission losses in the underground cables and submarine cables will depend on the route length, the conductor material used and the cross-sectional area of the conductor. We have, however, prepared estimates of the transmission losses that we anticipate will occur in full power scenarios on AQUIND Interconnector. These are shown in Table 4-3 and are based on: (i) the fact that VSC converter station losses are typically 1.0% of their rating; and (ii) the current AQUIND Interconnector specifications.

The overall scheme loss is expected to be 75.3 MW, rounded to 75MW. This represents total losses of approximately 3.6%.

Table 4-3 Technical line losses

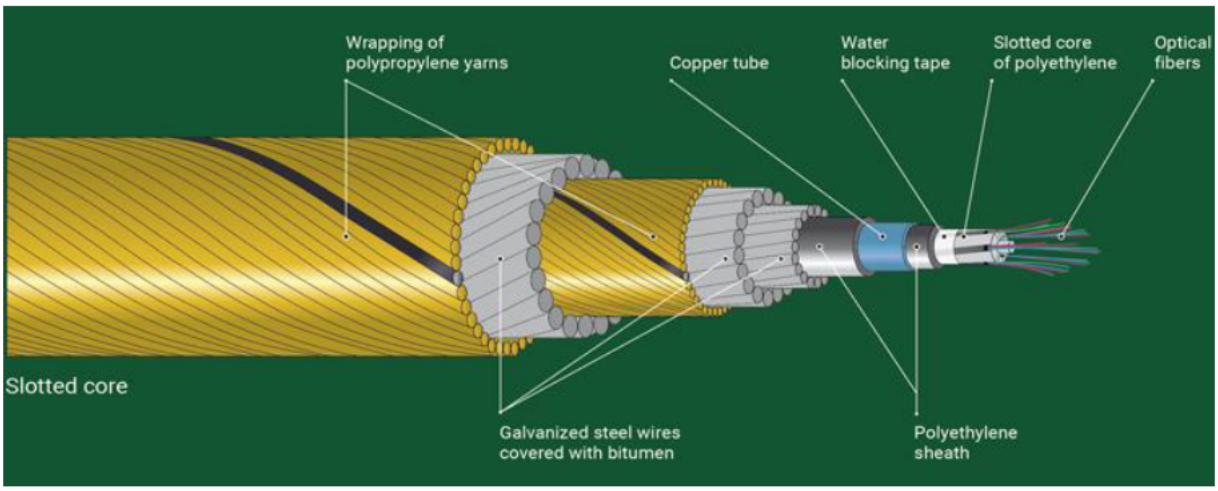
Component	Loss (MW)
Converter Station	20.75
DC Marine Cables	13.2
French DC Cables	1.9
GB DC Cables	1.4
French AC Cables	0.2
GB AC Cables	0.2
Total losses scheme	**75.3 MW**
Loss per pole	**37.65 MW**

4.3.5 Inclusion of data cable

As part of the Project, AQUIND will be deploying fibre optic infrastructure for protection and monitoring purposes. A fibre optic data transmission cable will be installed in a trench alongside and at the same time with each of the two power cable pairs both offshore and onshore. The spare data transmission capacity of such cables may be used to transfer data of third parties, providing further connectivity between France and England.

Up to [redacted] "dark" fibres in each of the two data transmission cables may be available for third-party access enabling the high data transfer rates of up to [redacted] Gbps per fibre pair. The AQUIND fibre optic transmission link offers a shorter route than some of the existing systems, ensuring the low latency time of approximately [redacted] ms. The system will be capable of connecting the French and English shores without the need for amplification by subsea repeaters.

Figure 4-5 AQUIND Interconnector data cable



Installation in the same trench as the power cables and alongside them, together with separation of the two cable systems, ensures consistent protection against fishing and anchor damage as well as natural hazards.

4.4 Ownership and commercial arrangements

This section of the Request for Exemption explains the ownership structure of the Project and the proposed operating arrangements. We note that the future operating arrangements will be further developed as the project progresses. AQUIND will keep the NRAs informed of any developments.

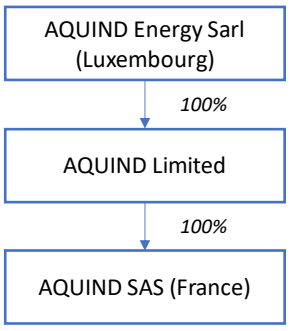
4.4.1 Ownership and shareholding

4.4.1.1 Project promoters

AQUIND Interconnector is promoted by:

- AQUIND SAS, société par actions simplifiée, created in accordance with the laws of France with registration R.C.S. number 808 503 940 and registered address at 72 rue de Lessard 76100 Rouen and;
- AQUIND Limited, a limited liability company under the laws of England and Wales with company number 06681477 and the registered address at OGN House, Hadrian Way, Wallsend, NE28 6HL; and
- AQUIND Energy Sarl, Société à responsabilité limitée, created in accordance with the laws of Luxembourg with registration number B229924 and registered address at 26 boulevard de Kockelscheuer, 1821 Luxembourg.

Figure 4-6 AQUIND Interconnector ownership structure



No entities or people involved in the AQUIND company group structure have control over any energy generator, producer or supplier.

4.4.1.2 Future equity holdings

AQUIND shareholders may consider investing in other assets in the electricity industry in the UK or France in the future (for example, electricity storage, renewable power generation or marginal balancing plant).

AQUIND anticipates seeking further equity investment as part of its financing strategy in the future. AQUIND is currently discussing an equity investment potentially including an entity that holds some generation assets interest in the UK, French or other European markets. If these investments go ahead, AQUIND would seek to be compliant with the relevant unbundling regulations and in particular with

the provisions regarding the "*control over an undertaking performing any of the functions of generation or supply*".[4]

Further information on AQUIND's proposed approach is identified in Section 4.5.

4.5 AQUIND Financing structure

This section sets out AQUIND's indicative financing plan (Section 4.5.1), followed by a description of the planned commissioning date (Section 4.5.2).

4.5.1 AQUIND Indicative financing plan

AQUIND Interconnector is the sole business of AQUIND. For these purposes, AQUIND can be considered a project entity.

AQUIND's financing strategy is to attract funds to invest in AQUIND Interconnector on a project-finance basis. Our analysis shows that AQUIND Interconnector can be an attractive business proposition for project-finance providers, subject to AQUIND being granted appropriate regulatory regimes, including an Exemption as requested in this Request for Exemption.

AQUIND is being financed at the development stage by private investments. This is the riskiest part of financing and it is very hard to attract outside investors. Up to the present moment, nearly [redacted] have been invested by AQUIND and its shareholders in the development stage of the Project.

AQUIND will seek further equity funding and non-recourse project financing from wider pools of potential investors for the construction stage of the Project. The target combination of debt and equity will be determined through the ongoing discussions around the most efficient investment approach with potential investors while the Exemption is assessed, but in any case project debt is unlikely to be less than 50%.

A summary of the indicative financing plan is set out in Table 4-4.

Table 4-4 Indicative financing plan

Source of financing	Financial contribution
AQUIND's own resources	▸ [redacted]m to date; plus ▸ [redacted] until FID
Project finance	▸ [redacted] ▸ Expected [redacted]% of capex
Other sources (equity investors)	▸ Expected [redacted]% of capex

The final approach to the financing strategy depends on the details of the regulatory arrangement with the NRAs, including the form and duration of the Exemption.

The combination of investors may include:

- Equity providers:
  [redacted]

[4] Directive 2009/72/EC, Article 9.

- Non-recourse finance providers:

AQUIND is engaging with various types of the potential investors, at this stage primarily equity providers, including specialised investment funds, corporate investors, EPCI contractors and high net worth individuals. These discussions are covered by mutual confidentiality requirements.

Taking into account that a typical ticket size for banks in such project finance deals is around € million, AQUIND expects there would be a syndicate of lenders. While there are not many examples of fully private interconnectors, recent offshore wind transactions suggest that AQUIND should expect that term loans would be for at least years.[5] AQUIND may opt for a share of shorter- or longer-term loans subject to future refinancing after a certain period of time. A precise loan strategy will be determined through further engagement with debt providers and equity investors, based on the final regulatory regime applicable in the UK and in France, including the form and the duration of the Exemption.

Recent transactions involving offshore wind farms also show that if it is possible to confirm a business case for a project, then it is also possible to attract investors such as infrastructure funds, pension funds and sovereign funds who have a longer investment horizon than private investors. In offshore wind it has been achieved through a direct tariff support by Government.

Without the flexibility provided by the exemptions requested in this Request for Exemption, AQUIND Interconnector will not be able to attract non-recourse debt finance or equity. Furthermore, if particularly onerous conditions are imposed as part of the exemption, the lender's margin, and therefore the cost of the project, will increase. This may make it non-viable for AQUIND to proceed. AQUIND is not in a position to finance the Project on "balance sheet" as national TSOs and utilities may be in a position to do.

AQUIND, with its advisors, has prepared a financial model to simulate the expected cash-flows based on a set of economic assumptions outlined in Exhibit 1. The financial model is provided in Exhibit 3.

As AQUIND is unable to operate an interconnector in France without an exemption, the exemption length will be linked to the expected debt repayment period, incorporating at least 5 years additional

[5] Page 30 of "Where's the money coming from? Financing offshore wind farms" European Wind Energy Association, November 2013.

headroom. The exemption is therefore required for a period of time that exceeds the term of the non-recourse debt by a safe margin. It would ensure that the project is able to address the following risks:

- Actual terms and conditions of financing – given uncertainties affecting exchange and interest rates, which stem from Brexit and other political and macro-economic factors, AQUIND will be able to finalise its financing package at the point of Final Investment Decision. At this stage, AQUIND requires an appropriate amount of flexibility to make prospective investors comfortable.
- Market conditions as discussed in this Request for Exemption.
- Programme and cost risks of the project as discussed in this Request for Exemption.

4.5.2 AQUIND commissioning date and project cost breakdown

AQUIND is working with technical advisors, WSP, to plan all project milestones through the planning, construction and commissioning phases of the project. This complex planning exercise takes into account a range of contingencies that may arise during the programme. Based on this analysis, AQUIND will be ready to commission in Q2 2024.

For a project of this size and cost, it is not unusual for unexpected events to delay the projected commissioning date. A number of the possible reasons for such a delay are outside of AQUIND's control – for example, unforeseen planning challenges or weather conditions delaying offshore works. At this early stage of the project, it is not possible to identify an accurate specific commissioning date for the project.

As an exempt investor with no financial support, any project delay will increase the project cost and delay revenue recovery. AQUIND, and its shareholder, are therefore strongly incentivised to minimise project delays. Rather than setting the start of the exemption period at this stage, AQUIND requests that the exemption start date is aligned with the actual full commissioning date of the project.

In order to give the NRAs clear sight of project progress, AQUIND will provide NRAs with appropriate updates.

Table 4-5 provides a detailed breakdown of costs based on the latest procurement and technical information.

Table 4-5 AQUIND indicative project cost breakdown

Capex	Assumptions	Cost (Real €m 2018)					
		2015-19	2020	2021	2022	2023	2024
Cables	Cost for equipment and installation. *Excludes type tests/prequalification tests, tax, customs charges.*	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	...of which [redacted]% Marine (DC): 4 cables with total length of 728km.						
	...of which [redacted]% Underground (DC): 4 HVDC cables with total length of 224km.						
	...of which: [redacted]% Fibre optic cables and other costs						

Capex	Assumptions	Cost (Real €m 2018)
France connection works	Cost for RTE construction works, including AC cables, and studies required to connect asset at Barnabos. Excludes VAT.	[redacted]
GB connection works	Construction works, including AC cables, and studies required to connect asset at Lovedean. Excludes VAT.	[redacted]
Converter stations	2 x VSC HVDC converter stations for each monopole (4 in total).	[redacted]
Owner's costs	Owner's project management, engineering and supervision costs	[redacted]
	CAR insurance	[redacted]
Total CAPEX (2021-2024)		[redacted]
Total DEVEX (2015-2021)		[redacted]
Total CAPEX and DEVEX costs (used in the CBA), 2015-2024		**1,426**

4.6 Supply chain strategy

This section sets out the supply chain strategy that AQUIND will implement to deliver the Interconnector. The main contract lots that AQUIND is planning to procure are set out in Section 4.6.1. Section 4.6.2 describes the competitive tender process for the construction contracts and Section 4.6.3 summarises AQUIND's approach to managing the interfaces among relevant contractors.

4.6.1 Contract lots

AQUIND will use a single open procurement process for the Project and is currently planning to award up to three Engineering, Procurement, Construction and Installation ("EPCI") contracts as outlined below:

- **EPCI Lot 1 (converter stations)**: the design, building, installation, commissioning, operation and maintenance of the converter stations at both Lovedean and Barnabos
- [redacted]
- **EPCI Lot 2 (HVDC Cables (Marine and Land) and Fibre Optic Cables and Equipment):** the design, manufacturing, installation, commissioning and maintenance of the HVDC Sub Marine and Land Cable and the Fibre Optic Cable – Poles No 1 and 2. An invitation to the prequalified suppliers to put in place necessary arrangements for consortiums or subcontracting has been made.
- **EPCI Lot 3 (Optional – Lots 1 and 2 combined):** the design, building, installation, commissioning, operation and maintenance of the converter stations at both Lovedean and Barnabos and Poles 1 and 2.

The current conditions of the HVDC industry and the nature of interconnector projects are such that it is unlikely that there will be a single contractor, who would undertake delivering Lot 3. An agreement with National Grid to perform the design, manufacture, maintenance and commissioning of the HVAC cable connection from the converter station to Lovedean substation has recently been achieved. A separate design and engineering contract may be signed with each supplier to be triggered prior to the main contract taking effect.

4.6.2 Tender process and next steps

As set out in detail in Exhibit 11, development of AQUIND Interconnector creates a range of market and commercial risks, including cost increases and overrun, implementation/programme delays and design changes. As part of our strategy to mitigate these risks, AQUIND will be putting in place a competitive tender process to deliver a comprehensive set of contracts that will allocate risks to the most appropriate parties. The context and the detailed plan for the tender process are set out in the following paragraphs.

The costs for the construction stage are based on the quotes elicited from prospective suppliers. To date, AQUIND has formally engaged with suppliers as follows:

- [redacted]
- [redacted]

The responses from the supply chain have been discussed at meetings with respective suppliers and also reviewed by AQUIND's advisors. The content of such responses is confidential, but the information provided by the suppliers has been used to calculate the expected capital costs of the Project. As a result of this engagement the procurement and lot structure strategy have been confirmed. AQUIND published the contract notice that started the procurement process on 3 June 2019 in OJEU.[6]

Following the pre-qualification stage, commenced in July 2019, AQUIND pre-qualified 5 potential converter station suppliers and 6 potential cable suppliers in October 2019. The prequalified suppliers were updated on the project's progress in January – February 2020 in a series of meetings.

The next steps of this tender process will include:

- preparation of the terms and conditions of the contract - ongoing,
- preparation of attachments to ITT with all technical information - ongoing;
- invitation to tender;
- review and assessment of tender submissions; and
- negotiations with potential suppliers of the Best and Final Offer.

The EPCI Terms and Conditions are planned to be structured to facilitate project finance and will be based upon fixed cost and schedule parameters with liquidated damages to guard against non-

[6] Link available here.

delivery. Where cost certainty cannot be achieved in the EPCI market for specific items, such as commodity price changes, labour costs changes, legislation changes, adverse unforeseen offshore weather and subsoil conditions, a limited number of instances of engineering changes and other construction risks, as appropriate, AQUIND will aim for these additional costs to be incorporated into the eligible project costs for both the GB and French regulatory settlements for the Project. The contracts are proposed to be in line with the FIDIC Silver/Yellow book.[7]

Construction will begin promptly after Financial Close with total construction cost estimated at approx. €1,426 million. The construction programme will be informed by the EPC engagement and is expected to be c.3 years with a target commissioning date in Q2 2024.

In all activities above, AQUIND's team will be supported by the relevant external advisors, including on procurement, engineering, legal and commercial aspects of the tender process.

We consider that the process described above will enable AQUIND to select the contractors that would be responsible for delivering the project in a competitive and transparent manner and thus secure the best value for the GB and French network users, as well as the investors of the project.

4.6.3 Approach to interface management

It will be the contractor's responsibility to ensure the design, construction and commissioning of the converter stations and cables meets the AQUIND technical specification outlined as well as the parameters established under the EPCI contract. They will also be responsible for appointing and managing Tier 2 civil contractors.

AQUIND and the Owner's Engineer will monitor compliance with the EPC contract(s). They will review deliverables, programme and cost as well as identify associated risk and reporting on agreed Key Performance Indicators.

However, based on the analysis in the previous sections, we anticipate that there will be two or more suppliers delivering different parts of the Project, and the interfaces between them will need to be managed. For each interface, we will consider the party best placed to manage it – whether this is one of the suppliers or AQUIND. In general, we consider that contractors delivering two or more packages would seek to internalise the interface risks and this would be reflected in a higher cost. Conversely, if AQUIND were to manage the interface risks themselves, this could reduce the cost of individual supply lots.

AQUIND will put in place suitable arrangements to manage the interface risks appropriately. At this stage, we anticipate that this would require:

- a project management team to sequence and align a timely delivery of different elements of the project;
- an engineering team, to address technical interface issues such as physical dimensioning and electro-engineering issues;
- a technical and legal team to manage issues arising if competitors were required to collaborate (and potentially share commercially sensitive information); and
- an external engagement team to support AQUIND's public relations throughout the construction of the project.

[7] EPC/Turnkey Contract 2nd Ed (2017 Silver Book) and Plant and Design-Build Contract 2nd Ed (2017 Yellow Book).

4.7 Project plan and timeline to operation

AQUIND have been working with a range of parties to develop the Interconnector proposition presented in this Request for Exemption. Along with the national TSOs and NRAs, this has also included technical, economic and legal consultants to advise on all aspects of the project.

4.7.1 Key milestones reached by AQUIND

AQUIND Interconnector has been in development since April 2014. Key progress to date includes:

- A range of **feasibility studies** have been completed and AQUIND **consulted widely** on the project in accordance with the TEN-E Regulation.
- A **connection offer** from National Grid was signed in June 2016.
- A *Proposition Technique et Financière* (**PTF**) was signed by AQUIND in March 2017.
- AQUIND reached a major project milestone in September 2016 with Ofgem granting AQUIND a **GB Electricity Interconnector licence.**
- AQUIND is also recognised in Europe having been listed in **ENTSO-E's Ten Year Network Development Plan** (TYNDP) 2016 and 2018, and has also been identified as a **Project of Common Interest** (PCI) on the Third PCI List. AQUIND has been included in TYNDP 2020 (Project number 247).
- AQUIND has been designated as a **Nationally Significant Infrastructure Project** in the UK in July 2018, and submitted an application for the **Development Consent Order** in November 2019, which was accepted for examination in December 2019.
- AQUIND has ensured continued engagement with the NRAs and the TSOs in GB and France, and maintained regular contact with the **supply chain.** As part of this, AQUIND engaged with prospective suppliers and initiated an **OJEU tender process** for the Engineering, Procurement, Construction and Installation of the interconnector.
- Converter station locations, landfalls and cable routes have been identified. This has included detailed marine geophysical and geotechnical surveys of the total length of the marine cable route and ground investigation surveys in France and the UK.
- AQUIND continues investor engagement.

The key milestones for the project, including those agreed in the GB with the National Grid as part of the connection agreement, are set out in the AQUIND delivery programme, which is included in detail in Exhibit 11 – "Programme plan and programme risks". The connection procedures in both GB and France provide for modification procedures, including the timing of the connection that might be subject to changes due to various circumstances.

4.7.2 Consents and licences

A project of AQUIND's size, spanning two jurisdictions, requires an extensive planning schedule with a number of necessary consents and licence. Exhibit 9 provides a summary of the required consents and licences.

4.8 Operating arrangements

This section sets out initial arrangement with respect to capacity allocation and market reporting and transparency.

4.8.1 Transparency and reporting obligations

AQUIND recognises the importance of timely and transparent reporting requirements. For all capacity, AQUIND will ensure reporting of all auction timetables and auction results to ensure compliance with European and national transparency requirements. The detailed provisions for reporting will be set out in the AQUIND Access Rules. These will be subject to NRA approval and align with equivalent product rules on the GB-France border.

AQUIND will publish all results for the allocation of all capacity auctions as soon as practicable after the auction has taken place. The information will comply fully with the requirements the relevant legislation and, as a minimum, will include:

- Names of registered winning bidders
- The marginal auction clearing price
- Total capacity demanded
- Total capacity awarded

This public information will be in addition to information regarding auction results provided directly to winning bidders in the relevant auction. AQUIND anticipates that this information will be made available through the procured auction trading system. The specific details of the trading system will be developed and shared with NRAs in due course.

*4.8.1.1 **Secondary trading***

Secondary trading offers market participants a route to re-sell capacity awarded through the multi-year auctions. AQUIND proposes to facilitate secondary trading to ensure that unused capacity is re-allocated. This principle will be supported by the UIOSI rules that will force capacity holders to recycle capacity if it is not nominated for delivery by the Day-ahead stage. These functions and processes will be formalised through the procurement and design of the AQUIND auction platform.

*4.8.1.2 **European Network Code compliance***

AQUIND will ensure full compliance with the market related European Network Codes and subsequent Regulations (Forward Capacity Allocation and Capacity Allocation and Congestion Management) for all capacity. In this respect, AQUIND will not be any different to other regulated GB-France interconnectors.

4.8.2 Transparency

AQUIND will put in place data and transparency processes to provide relevant information to NRAs, TSOs, market participants and the market, as required under relevant legislation. The requirements for this data provision will come from a number of sources, not limited to the Transparency Regulation 543/2013, European Network Codes, and any additional requirements proposed by the NRAs through the exemption decision or otherwise.

AQUIND will put in place communication procedures that take into account the format, frequency and recipients of each data items. These procedures will include:

- Information sent directly to the NRAs
- Information sent directly to other relevant organisations
- Information sent directly to AQUIND capacity holders
- Information made available on the AQUIND public website (public).

The precise mechanisms will be developed through the construction phase of the project as the project developers prepare for operation. For information required during the construction phase of the project, AQUIND will engage bilaterally with the national TSOs and NRAs as required to provide regular updates on the construction progress, to be agreed with the NRAs as part of this Request for Exemption.

Request for Exemption: AQUIND Interconnector

PRIVATE AND CONFIDENTIAL

Copyright

5 Exemption request and rationale

5.1 Introduction

This section of the exemption application includes:

- A description of the grounds for exemption.
- A summary of AQUIND's exemption request.

5.2 The grounds for exemption

The decision to award an exemption is based on the specific nature of the project. An exemption may only be granted where the project meets the conditions set out in Article 63 of Regulation 2019/943:

> *(a) the investment enhances competition in electricity supply;*
>
> *(b) the level of risk attached to the investment is such that the investment would not take place unless the exemption is granted;*
>
> *(c) the interconnector is owned by a natural or legal person which is separate, at least in terms of its legal form, from the system operators in whose systems that interconnector will be built;*
>
> *(d) charges are levied on users of that interconnector;*
>
> *(e) since the partial market opening referred to in Article 19 of Directive 96/92/EC of the European Parliament and of the Council[1], no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector; and*
>
> *(f) an exemption would not be to the detriment of competition or the effective functioning of the internal market for electricity, or the efficient functioning of the regulated systems to which the interconnector is linked.*

Article 63 states in relation to a request for an exemption for a new direct-current interconnector that:

- such exemption is "for a limited period of time" – 63(1)
- the decision "shall be taken on a case-by-case basis by the regulatory authority" – 63(4)
- the "exemption may cover all or part of the new interconnector" – 63(4).

This section of the Request for Exemption explains the unique nature of AQUIND Interconnector, the risks faced by the project developers, and the rationale for the exemption.

5.3 AQUIND's exemption request

Pursuant to Article 63 of Regulation 2019/943, AQUIND seeks a partial exemption for AQUIND Interconnector in France from Articles 19(2) and 19(3) of Regulation 2019/943 (regarding the Use of Revenues) for a period of 25 years from the start of commercial operations. The partial exemption

[1] Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity (OJ L 27, 30.1.1997, p. 20)

would apply to a fixed share of AQUIND's revenues that corresponds to the proportion of AQUIND Interconnector capital and operational costs related to French territory (onshore and French territorial waters).

In accordance with French national law, an exemption granted under Article 63 of Regulation 2019/943 would also have the effect of permitting AQUIND to operate AQUIND Interconnector in France. Despite the limited duration of the exemption requested, AQUIND will seek to maintain this permission to operate AQUIND Interconnector in France for its full operational life.

AQUIND does not seek an exemption for Unbundling (Article 43, Directive 2019/944), Third Party Access (Article 6, Directive 2019/944) or the approval of charging and access rules (Article 59(7) and 60(1) of Directive 2019/944). While AQUIND's existing structure and investors do not require an exemption from unbundling requirements, AQUIND does not rule out the possibility of reconsidering unbundling requirements if necessitated by the business's arrangements of potential future investors.

5.3.1 Articles 19(2) and 19(3) of Regulation 2019/943: Use of Revenues

AQUIND is applying for a partial exemption from Articles 19(2) and 19(3) of Regulation 2019/943. The exemption will apply to a fixed share of the revenues[2] generated by AQUIND Interconnector that corresponds to the proportion of the project that will be situated in French territory (including onshore and in French territorial waters) (the "**Exempt Portion**"). This share is estimated to be 32%, based on AQUIND's cost analysis presented in Section 6.4 below. The remaining share of the revenues generated by the project will not be exempt from the requirements of Articles 19(2) and 19(3).

The revenues covered by the scope of the Exemption will include the fixed share of the sum of the following components:

- Congestion revenues generated by AQUIND Interconnector
- Capacity Mechanism revenues, insofar as these revenues accrue to the interconnector owner
- Ancillary services revenues, insofar as these revenues accrue to the interconnector owner
- Netting-off component, which may include, for example, any costs that may apply to the project, such as trading tariffs, or penalties associated with non-performance of Capacity Mechanism and/or Ancillary services contracts that AQUIND Interconnector may, from time to time, enter into
- Such other revenues arising from AQUIND Interconnector performing its role as electricity interconnector within the period of duration of the requested exemption.

AQUIND's Request for Exemption on the Use of Revenues in France follows extensive regulatory engagement with CRE, as well as Ofgem and ACER to consider and test the viability of different investment and regulatory routes for AQUIND Interconnector. The conclusion of these regulatory tests, extensive analysis and formal regulatory decisions is that the only investment route available to AQUIND in France is through an exemption under Article 63. Without an exemption, the project cannot, and will not, progress and the significant benefits to France, GB and Europe, as demonstrated in the AQUIND revenue and social welfare analysis (Exhibit 1) will not be realised.[3]

[2] We envisage that the share of revenues subject to the Exemption will be fixed ex-ante for the duration of the Exemption (i.e. 25 years), based on the territorial principle.

[3] The project benefits include social welfare benefits, benefits to security of supply, competition benefits, environmental benefits, benefits in the provision of ancillary services and taxation benefits to French society.

We summarise here the project history and the regulatory decisions that led to this exemption request and provide the core rationale for AQUNID's Request for Exemption:

- **AQUIND's 2017 Request for Exemption**: On 15 May 2017, AQUIND applied to CRE and Ofgem (as the NRAs for GB and France) under Article 17 of Regulation 714/2009[4] (the "Electricity Regulation") for certain exemptions from the relevant regulations (the "2017 Exemption Request"). Following the provision of further information by AQUIND, the 2017 Exemption Request was accepted as complete by Ofgem on 4 September 2017. Pursuant to Article 17(5) of the Electricity Regulation, on 19 December 2017, AQUIND's exemption application was then referred by Ofgem and CRE to ACER for a decision.
- **ACER's decision not to grant AQUIND's Request for Exemption**: By decision on 19 June 2018, ACER refused to grant the 2017 Exemption Request on the basis that the condition set out in Article 17(1)(b) of the Electricity Regulation was not met, finding that AQUIND had not sufficiently demonstrated that the level of risk attached to the investment was such that the investment would not take place unless an exemption was granted. This decision by ACER was primarily based on the fact that, in ACER's view, AQUIND should have tested whether a regulated regime was available to the Project. This in turn was based on AQUIND Interconnector's PCI status (granted during the course of ACER's review of the 2017 Exemption Request), which could allow the development of the project under a regulated regime pursuant to the Cross-Border Cost Allocation (CBCA) arrangements of Article 12 of Regulation 347/2013 (the "TEN-E Regulation").[5]
- [redacted]
- **AQUIND's PCI status**: On 31 October 2019 the European Commission (the "Commission") adopted a delegated regulation (the "Delegated Regulation") that amends the union list of projects of common interest ("PCIs") inter alia by removing AQUIND Interconnector from the list and accordingly AQUIND Interconnector is set to lose PCI status when the Delegated Regulation comes into force. [redacted]

The conclusions of the steps and decisions summarised above is that the only investment route that will permit AQUIND to continue to develop to project is through an exemption in France. There is no other regulated regime for non-RTE interconnection in France.[6] [redacted]

[4] Article 63 of Regulation 2019/943 essentially restates the conditions for an exemption set out in Article 17 of Regulation 714/2009.

[5] AQUIND Limited appealed to the Board of Appeal of ACER against ACER's decision to reject the Exemption Request, but this appeal was rejected on 17 October 2018. An appeal to the General Court of the European Union against the decision of the Board of Appeal was submitted in January 2019, which is ongoing as of the date of this Request for Exemption.

[6] In GB, the regulatory arrangements set out under the Cap and Floor regime allow for third party interconnector developers and as such AQUIND does not require any exemptions in GB.

[redacted] The steps taken by AQUIND demonstrate fully that the project risk is such that the investment will not take place unless an exemption is granted.

AQUIND therefore seeks a partial exemption sufficient to allow the project to progress in France. The scope of the exemption is proportionate and limited such that the exemption is only sought for elements of the legislation that would otherwise prevent the project's development in France, i.e. the use of revenues. The interconnector will operate in the same way as any other regulated interconnector, with capacity products made available to third parties in regulated timeframes.

AQUIND recognises that there is a degree of revenue uncertainty for a GB-France interconnector, as is the case for any infrastructure project of this scale, which could also result in additional returns for the project. Should the AQUIND Interconnector be more profitable than expected, AQUIND proposes to introduce additional conditions on the portion of the revenues generated by the interconnector in France to re-distribute some of the profits to French network users in scenarios where revenues exceed expectations. Specifically, we propose a "profit-sharing mechanism" as follows: if the present value of profits related to the Exempt Portion of the Project, discounted at a nominal rate of [redacted]%, is positive, then [redacted]% of these profits would be transferred from AQUIND to RTE (and hence to French network users).

In calculating the profits related to the Exempt Portion of the Project, for the purposes of the "profit-sharing mechanism" described above, we propose that:

- The profits are calculated based on the actual costs and actual revenues associated with the Exempt Portion of the Project; and
- The revenues will be split and ring-fenced into two separate "pots", corresponding to the Exempt and Non-Exempt Portion of the Project. The ring-fencing arrangements put in place will be such that there is no interaction between the two "pots". For the avoidance of doubt, regulatory arrangements (if any) related to the treatment of AQUIND's revenues on the GB side will be entirely independent of the calculations performed for the purposes of the "profit-sharing mechanism" for the Exempt Portion of the Project described above.

We consider that this profit-sharing mechanism is appropriate, proportionate and in the interest of French socio-economic welfare because it aligns AQUIND's and French network users' incentives to maximise operational availability of the interconnector at times when the Project generates the highest value. In addition, the "profit-sharing mechanism" will deliver additional benefits of revenue upside to French network users, and critically it will do so without transferring additional risk to French network users. The specific details of the proposed "profit-sharing mechanism" would be fixed ex-ante by CRE, for the duration of the Exemption.

The exemption from Article 19 is sought for a period of 25 years.

5.3.2 Exemption required to operate AQUIND Interconnector in France

An exemption is required in order for AQUIND to be permitted to operate AQUIND Interconnector in France. Under French law, the TSO is responsible for the development, construction and operation of regulated interconnectors. RTE is currently the only eligible entity to undertake these operations. AQUIND is therefore prohibited from operating a regulated interconnector in France under Articles L. 121-4 and L. 321-6 of the French Energy Code[7].

[7] Adopted by Ordonnance 2011-504 of 9 May 2010.

Based on the above, CRE adopted a decision on 29 March 2012[8] which provides that the only possibility for a private party to operate an interconnector in France is within the framework of an exemption. As such, AQUIND requires an exemption under Regulation 2019/943 in order to construct and operate AQUIND Interconnector in France.

AQUIND will seek to maintain this permission to operate AQUIND Interconnector in France for its full operational life, beyond the 25 year period of this Request for Exemption.

5.4 Exempt Portion of AQUIND Interconnector

AQUIND has undertaken a detailed cost analysis, focusing on the development, capital and operating expenditure. On this basis, AQUIND estimates that the proportion of the Project that will be situated in French territory (including onshore and in French territorial waters), i.e. the Exempt Portion, is 32%.

A summary of this analysis is presented in Table 5-1 below.

Table 5-1: Allocation of AQUIND Interconnector costs[9]

Cost category	Total	...of which the Exempt Portion
Capex – Converters	[redacted]	[redacted]
Capex – Cables + Connections	[redacted]	[redacted]
Capex – (CAR, Project mgmt)	[redacted]	[redacted]
Devex	[redacted]	[redacted]
Subtotal Capex + Devex	[redacted]	[redacted]
Opex (Present value)	[redacted]	[redacted]
Repex (Present value)	[redacted]	[redacted]
Total Capex + Devex + Opex + Repex	€1,537m	€488m
Cost split	100%	32%

Source: AQUIND analysis.

[8] CRE deliberation dated 29 March 2012 communicating on the application of Article 17 of the EC Regulation No. 714/2009 dated 13 July 2009

[9] Presented here in PV terms taking into account the profile of costs

Request for Exemption: AQUIND Interconnector

PRIVATE AND CONFIDENTIAL

Copyright

6 Fulfilling the relevant exemption criteria

6.1 Introduction

This section of the Request for Exemption explains how AQUIND Interconnector meets the exemption criteria set out in Article 63 of the Regulation.

The promoters of AQUIND Interconnector have identified the need for additional capacity between GB and France and material positive benefits of the project for France and for the wider EU.

AQUIND's analysis shows that the Project will increase competition in GB and France and across Europe without causing detriment to the functioning of the internal market. Pursuant to this Request for Exemption, these benefits will be delivered in France without the need for network tariff in France.

As discussed in Section 5 of this Request for Exemption, this investment will not take place unless this exemption is granted. AQUIND requests an exemption that is proportionate and related to the Use of Revenues in respect of the revenues generated by the Project, which corresponds to the Exempt Portion. Further AQUIND has incorporated a proposed condition into the Request for Exemption to ensure French network users benefit in scenarios where AQUIND's revenues exceed a certain threshold.

Table 6-1 summarises the way that AQUIND fulfils the requirements of Article 63 of the Regulation.

Table 6-1 Fulfilling Article 63 exemption criteria

Criteria	Summary
Competition (criterion a)	▸ No risk of any adverse impact of AQUIND on competition, given that no exemption from the prevailing capacity allocation rules is requested. ▸ Increase in traded volumes (liquidity) in the GB and French wholesale energy markets. ▸ Increase in competition in provision of capacity through the GB and French capacity markets, thus reducing the cost of meeting a desired level of security of supply in both countries. ▸ Increase in the range of providers of GB-France cross-border capacity.
Risk (criterion b)	▸ AQUIND tested extensively the viability of potential investment routes with CRE, ACER and Ofgem and concluded that without an exemption, the investment will not take place. ▸ Due to provisions of French law, AQUIND is not entitled to operate AQUIND Interconnector in France without an exemption. ▸ For the Exempt Portion of the Project, AQUIND faces revenue risk from competing projects, macroeconomic and policy risks (including Brexit) and curtailment risk ▸ For the Exempt Portion of the Project, AQUIND also faces substantial construction risk arising from the size and technical complexity of the project.
Ownership (criterion c)	▸ AQUIND is promoted by legal persons who have no affiliation with the system operators whose systems that interconnector will be connected to.
Charges (criterion d)	▸ Charges will be levied on users of the interconnector for the full interconnector capacity.
Recovery of costs (criterion e)	▸ No part of the capital or operating costs relating to the Exempt Portion has been (or will be) recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector.
Functioning of the internal market (criterion f)	▸ Strong positive increase in total net social welfare as a result of AQUIND ▸ Improved generation dispatch across GB, France and Europe, optimising renewables dispatch and reductions in CO_2 ▸ AQUIND is projected to reduce the price spread between GB and France, an objective of European market integration ▸ AQUIND has no significant negative impact on the continental European transmission grid ▸ AQUIND is not expected to require additional investment in the network in France[1]

6.2 Demonstrations of criterion (a) – Competition

The investment must enhance competition in electricity supply

[1] A comprehensive study of the impact of AQUIND on the French transmission system is provided in Exhibit 10 – *"Consentec report on the impact of AQUIND on the French transmission system"*. This study was completed by independent consultants, Consentec GmbH.

AQUIND will ensure competitive pressure through the sale of capacity through regulated markets, fully aligned with other interconnectors on the GB-France border.[2] AQUIND will therefore significantly increase capacity on the border.

6.2.1 Competition in cross-border capacity

AQUIND proposes to allocate all capacity on the basis of the prevailing allocation regulations and rules (i.e. without an exemption). As a result, the increase in cross-border capacity between France and GB cannot and will not have any adverse impact on competition.[3]

On the contrary, AQUIND is a non-incumbent-TSO investor and will therefore diversify the ownership of GB-France cross-border interconnectors, giving market participants additional choice across several markets:

- AQUIND Interconnector will widen the range of prospective providers of cross-border capacity for participants trading capacity on the interconnector. While this is not expected to fundamentally alter the nature of competition in the cross-border capacity market (under the prevailing capacity allocation rules), we consider it is beneficial to include another prospective provider of capacity, given that the majority of the capacity is owned by entities, related national transmission system operators of France and GB.
- AQUIND Interconnector will broaden the size of the wholesale market for energy in France and in GB, as well as increase their liquidity.
- AQUIND Interconnector will also, by participating in the GB Capacity Market, broaden the pool of participants in the GB capacity auction, thus increase the competitive pressures in that market (and/or increasing the security of supply in the connected markets).

In particular, AQUIND will triple the capacity offered by interconnectors that are not affiliated with national TSOs (from 1GW to 3GW).[4] This will ensure that competition for AQUIND capacity is maximised.

AQUIND is not requesting any exemption in respect of the prevailing capacity sales rules, therefore all capacity will be sold through competitive, regulated products, in a way that is consistent with other interconnectors on the GB-French border and aligned with the prevailing capacity allocation legislation.[5] As capacity will be sold through regulated products and timeframes, there will be no opportunity for any market participant to benefit from AQUIND in an anti-competitive way. Specifically, competition will be maximised through competitive allocation of capacity through capacity auctions and inclusion of Use-it-or-lose-it requirements on all capacity (both in compliance with requirements set out under the CACM and FCA Network Codes). Our existing high-level competition analysis supports these conclusions, indicating that AQUIND would not have any adverse impacts on market concentration.

[2] With the exception of ElecLink which plans to sell long-term contracts for up to 80% of its capacity.

[3] We recognise that in a situation where and interconnector owner applies for a form of exemption that includes long-term capacity sales, this observation would need to be justified further. However, AQUIND is not applying for any exemption in this respect.

[4] There is currently only one other non-TSO investor (ElecLink) building a GB-continental Europe interconnector and that cross-border interconnection is otherwise still dominated by national TSOs.

[5] Specifically, the Capacity Allocation and Congestion Management (CACM) and Forward Capacity Allocation (FCA) Network Codes.

6.2.2 Price competition

AQUIND will provide market participants with a larger tradeable market on both sides of the connection. In simple economic terms, more buyers and sellers will increase competition in the GB and French wholesale markets. This increase in competition is expected to place downward pressure on wholesale electricity prices as market participants compete for market share. AQUIND's ability to flexibly respond to short-term price signals, will result in increased competitive pressure in North-Western Europe, to the benefit of electricity consumers.

6.2.3 Measures of market share and pivotality

Trading capacity through organised, regulated markets, provides assurances and safeguards against dominant (or larger) players unfairly increasing their market dominance in either GB or France. AQUIND will not be in a position to allocate capacity to specific parties using the interconnector, nor will any specific party be able to hoard capacity or withhold AQUIND's capacity for competitive gain.

To support this conclusion we have included high level competition analysis with AQUIND's Request for Exemption (and set out in Exhibit 2). This analysis shows that AQUIND could marginally reduce concentration in the French generation market, reducing EDF market share, and could marginally reduce the instances where EDF is a pivotal supplier in France.[6]

6.2.4 Transmission capacity

AQUIND Interconnector will be a 2000MW project, which will be the largest interconnector between GB and France since IFA. We consider that there are several advantages to selecting this capacity, summarised below. In addition, Section 4 provides a summary of the technical restrictions on the size of AQUIND Interconnector.

- The project benefits can be realised more efficiently when delivered through a single project compared to a number of independent developers.
- The cable capacity for HVDC interconnectors is somewhat standardised, with typical cable capacities available being 700MW and 1000MW. This implies that potential sizing of the cable is 'discrete' in pre-determined steps. For example, an interconnector of 843 MW would require first-of-a-kind tailored development which would be prohibitively expensive.
- An interconnector of 2000MW, composed of two separate monopoles, provides a high degree of security of supply as each monopole can continue operating in case of a failure of the other one.
- By contrast, an interconnector larger than 2000MW with two circuits would push current technology boundaries, significantly increasing the construction and operational risks, while exceeding TSO limitations on on-time infeed loss. In addition, building a third circuit would complicate the construction process and interfaces to a degree which would make the Project impractical.
- The chosen capacity maximises the utilisation of the existing connection points in France and in GB: it was the largest capacity that could have been practically connected to national

[6] The pivotality analysis if based on the Residual Supplier Index (RSI). RSI considers the proportion of hours during the year where the dominant market participant is required to meet demand. The analysis shows that the introduction of AQUIND Interconnector, will not increase the opportunities for EDF to influence market prices in GB or France. The introduction of AQUIND Interconnector marginally reduces the number of hours in the modelled years when EDF is the pivotal supplier.

transmission systems at any specific connection location discussed with national transmission system operators.

On the basis of the above, we conclude that the capacity of the Project that has been selected to maximise the benefits of the Project for Europe.

6.3 Demonstration of criterion (b) – Risk

The level of risk attached to the investment is such that the investment would not take place unless an exemption is granted

Through testing the viability of potential investment routes with CRE, ACER and Ofgem, AQUIND has demonstrated that there is no alternative regulatory arrangement available in France and accordingly the development of AQUIND Interconnector will not take place without an exemption.

Further, AQUIND Interconnector is planning to finance the Project, including for the Exempt Portion, using project finance which means that prospective lenders and equity providers will be taking into account the Project's expected revenues in deciding whether (and on what terms) to offer finance. As such, prospective finance providers will evaluate whether the Project's future revenues are commensurate with the rate of return they expect to earn.[7]

Analysis undertaken by AQUIND for project financing purposes confirms this risk return relationship for infrastructure assets in GB and France. These equity return premia reflect the equity exposure for riskier projects, specifically relating to offshore construction and operating risk inherent with large infrastructure projects such as AQUIND (along with offshore wind and LNG infrastructure, for example).

The level of 'reasonable profit' is a well-known concept. In a competitive market "*an undertaking would be expected to earn 'normal profits' on any particular activity. These refer to the level of profits that an undertaking requires to provide a sufficient return to the lenders and shareholders that provide the undertaking with finance. This rate of return is referred to as the undertaking's 'cost of capital'*".[8] In practical terms, this means finance providers will compare the return they earn on their activities to the 'next best' alternative and, if their actual return is lower than what they would expect to earn in other activities, they will re-deploy their capital accordingly.

- This position is consistent with finance theory, which states in general terms that the reasonable return required by finance providers (both shareholders and lenders) is a function of the level of investment (i.e. capital employed) and risk associated with the project.
- This position is also consistent with the recent judgment on Baltic Cable, which concluded that, in the context of Use of Revenue regulation, non-TSO operators of cross-border interconnectors may be authorised by NRAs to use part of their congestion revenues to make a profit, so that it can "carry out its activity in financially acceptable conditions, which includes making an **appropriate profit**" (emphasis added).[9]

We agree with the judgment on Baltic Cable and understand that the NRAs will seek to identify the level of "appropriate profit" as part of their detailed assessment of this Exemption Request.

[7] We consider that as a project finance investment, AQUIND Interconnector may require a higher share of equity funding compared to an equivalent balance sheet financed project. However, in this assessment, we abstract from this consideration and focus on the total risk associated with AQUIND Interconnector as a project, independently of the financing arrangements.

[8] OFT Guidelines, ¶2.9.

[9] Case C-454/18, Judgment of the Court, 11 March 2020, Provisional text (link).

We explain below that AQUIND Interconnector faces specific risks in earning revenues (and incurring costs) that would adequately compensate finance providers for the risk they take on in financing the Project. AQUIND therefore requires, for the Exempt Portion, to have the flexibility to compensate finance providers commensurately, which in turn requires that AQUIND is exempted from the Use of Revenues provisions of Regulation 943/2019.

The following subsections explain that AQUIND Interconnector faces risks associated with: (i) restrictions in French law prohibiting any entity other than RTE from developing, constructing and operating regulated interconnectors;[10] (ii) revenue uncertainty arising from competing projects, being exposed to market pricing in France and GB, macroeconomic and policy risks (including Brexit) and curtailment risk; and (iii) construction risk arising from the size and technical complexity of the project. The first point relates to the fundamental inability of the Project to progress without an exemption in France, while the second and third points relate to the revenue and cost risk that the finance providers would have to bear, which in turn justifies the need for an exemption from the Use of Revenue regulations for the Exempt Portion of AQUIND Interconnector. While these risks are discussed individually, it is important to note that all project risks together create an overall risk profile, which will be considered by investors against potential returns to determine whether the investment should be made.

AQUIND acknowledges that some revenue certainty would be achieved on the regulated portion (e.g. through the "cap and floor" regime in GB) of AQUIND Interconnector under the proposed partial exemption. However, AQUIND would retain significant revenue risk arising in connection with the Exempt Portion, which in turn means that the finance providers also require to be compensated commensurately with this level of risk.

In some instances, project risks could result in upside opportunities for AQUIND. AQUIND's proposed profit sharing mechanism will ensure that any additional welfare attributable to the Exempt Portion is appropriately distributed between investors and French consumers.

6.3.1 No available regulated route

A key risk in the development of an interconnector is securing appropriate regulatory arrangements. Section 5 of this Exemption Request describes in detail the project history, engagement with regulators and regulatory decisions that led to this Request for Exemption. AQUIND has attempted and exhausted all other alternative approaches, [redacted] AQUIND has thereby conclusively demonstrated that the partial exemption requested in this Request for Exemption is the only route that will allow the development of AQUIND Interconnector to take place.

As discussed in Section 5, AQUIND also requires an exemption in order to operate transmission infrastructure in France. Under French law, RTE is currently the only entity eligible to develop, construct and operate regulated interconnectors. There is therefore a risk that AQUIND would be unable to operate the project unless an exemption is granted.

[10] In France, article L-321-6 of the Energy Code restricts the right to develop, construct and operate interconnectors to the operator of the public electricity transmission system. The construction and operation of an interconnector by a private investor can therefore only undertaken on the basis of an exemption pursuant to article 63 of Regulation 2019/943 as set out in the Délibération de la Commission de régulation de l'énergie du 29 mars 2012 portant communication sur l'application de l'article 17 du règlement (CE) n° 714/2009 du 13 juillet 2009.

6.3.2 Revenue uncertainty

AQUIND Interconnector faces a number of risks associated with the inherent ex-ante uncertainty of future congestion (and other) revenues that the Project will earn over its lifetime. The revenue uncertainty is a common feature of any investment of this type and is a largely unavoidable risk that must be allocated to someone – either the investor or the network user. For regulated TSO-developed interconnectors, this risk is allocated to the network users. By comparison, for interconnectors developed by non-TSO entities such as AQUIND, without available network tariff support for the Exempt Portion, the revenue uncertainty risk remains with the developer. To compensate the bearer of this, it is necessary to provide investors with an upside opportunity to earn higher returns. Such returns will be required to secure necessary investment and ensure that the Project happens.

In the following subsections, we illustrate two specific sources of revenue uncertainty: (1) uncertainty driven by the presence of other, competing, providers of capacity and (2) the inherent volatility of energy markets which determine the value of the capacity between the connecting regions, and we explain why they require AQUIND to obtain an exemption from the Use of Revenues regulations.

6.3.2.1 AQUIND Interconnector will face direct competition

AQUIND will face direct competition with the regulated interconnector IFA and the significant volume of GB-French interconnector capacity planned to commission over the next decade. AQUIND will therefore be in a direct competition with a number of other providers of interconnector capacity between GB and-France. The regulatory arrangements for AQUIND's competitors are varied: IFA is a regulated link (compliant with the Use of Revenue regulations), ElecLink, which is currently under construction, has obtained an exemption from the GB and French authorities and other proposed links are likely to be regulated under the Cap & Floor regime. AQUIND will therefore face competition with a range of other regulated and exempt interconnectors

Based on the National Grid interconnector register,[11] the TYNDP, and Ofgem's Cap and Floor window, two electricity interconnector projects are currently under construction between GB and France:

- ElecLink (1000MW) developed by GetLink; and
- IFA2 (1000MW) developed by National Grid and RTE.

AQUIND is expected to commission after the two GB-France interconnectors listed above.[12]

In addition, two other projects are under development: FABLink (1400MW) developed by RTE and Fab Link limited[13] and GridLink (1500MW) developed by iCON Infrastructure Partners III, L.P.[14] FABLink has been suspended following the publication of CRE deliberation in 2019.[15] Subject to further progress, would be expected to commission after AQUIND.

AQUIND's understanding from numerous discussion with the relevant French authorities that they are concerned that the project is too "risky" and that they do not wish for French network users to support the Project and would strongly prefer that the equity risk of the Project is borne by investors.

[11] National Grid's Interconnector Register is available on the ESO website here: https://www.nationalgrideso.com/connections/registers-reports-and-guidance

[12] Ofgem's letter of 18 November 2016: "Decision on project eligibility as part of our cap and floor regime for electricity interconnector applicants from the second window" – https://www.ofgem.gov.uk/system/files/docs/2016/11/w2_cf_eligibility_decision_letter.pdf

[13] https://www.fablink.net/about-us/

[14] https://www.gridlinkinterconnector.com/about-us/

[15] CRE Deliberation No 2019/170. See also *https://www.exmouthjournal.co.uk/news/cre-two-year-delay-for-investment-in-fab-link-project-1-6334829*

By developing the Project without any French network user support, the revenue risk will be transferred from the network users to AQUIND finance providers. To be willing to take this risk away from French network users, the finance providers need to be appropriately compensated and the only way such compensation can be provided by AQUIND is if the Exempt Portion of the project obtains an exemption from the Use of Revenues regulations, such that an "appropriate profit", i.e. compensation, can be provided for the finance providers in the form of an upside revenue opportunity.

6.3.2.2 Market volatility in France

AQUIND's revenue in France will be wholly reliant on the market, mainly driven by congestion revenue. Volatility in congestion revenue is a risk that is allocated to network users in the case of non-exempt interconnectors. However, in the case of AQUIND, such allocation is not possible and AQUIND will bear this risk on behalf of French network users. As explained in the previous subsection, transferring this volatility risk away from network users to AQUIND increases the total quantum of risk faced by investors, who will only be willing to take on such risk is they have a prospect of earning an appropriate rate of return, commensurate with such risk. In order to be able to offer such upside opportunity to investors, AQUIND requires an ability to earn and retain a sufficient level of revenues and therefore an exemption from the Use of Revenue regulation.

To evaluate this risk, AQUIND has projected congestion revenue using scenario analysis. This analysis shows the range of arbitrage revenue projections for AQUIND. This analysis is presented in Figure 6-1 (in respect of all projected arbitrage revenues) and Figure 2 (in respect of projected arbitrage revenues for the Exempt Portion, assuming for these purposes that the Exempt Portion constitutes 30% of AQUIND Interconnector). These figures show that across the three market scenarios, and on an annual basis, the AQUIND arbitrage revenue projections range from [redacted] per year to [redacted] per year (or [redacted] to [redacted] per year for the Exempt Portion).

Figure 6-1 AQUIND projected arbitrage revenue, three main scenarios

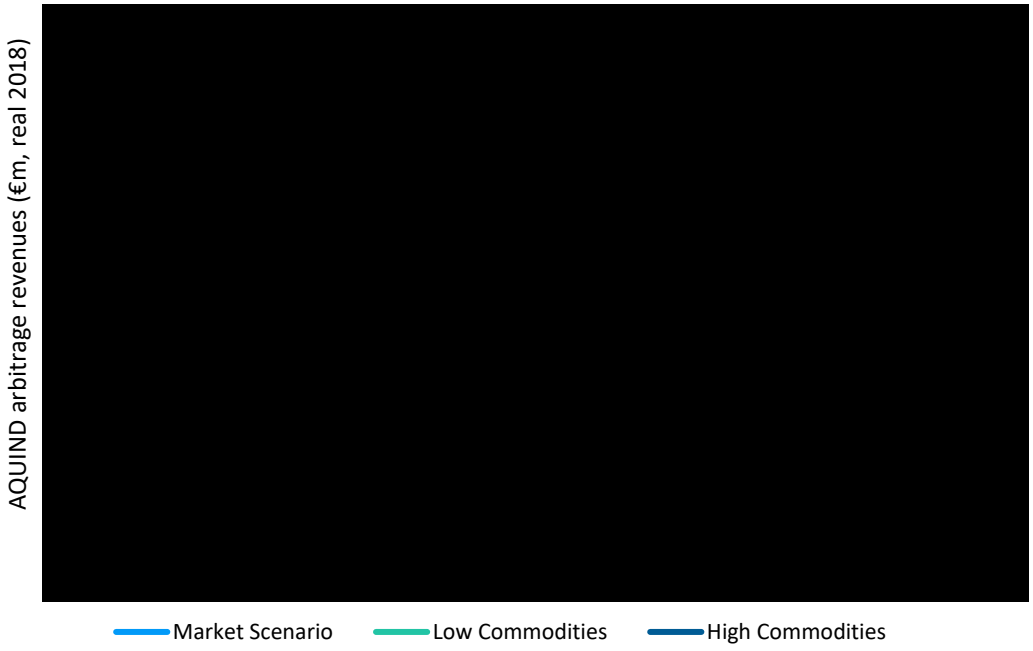
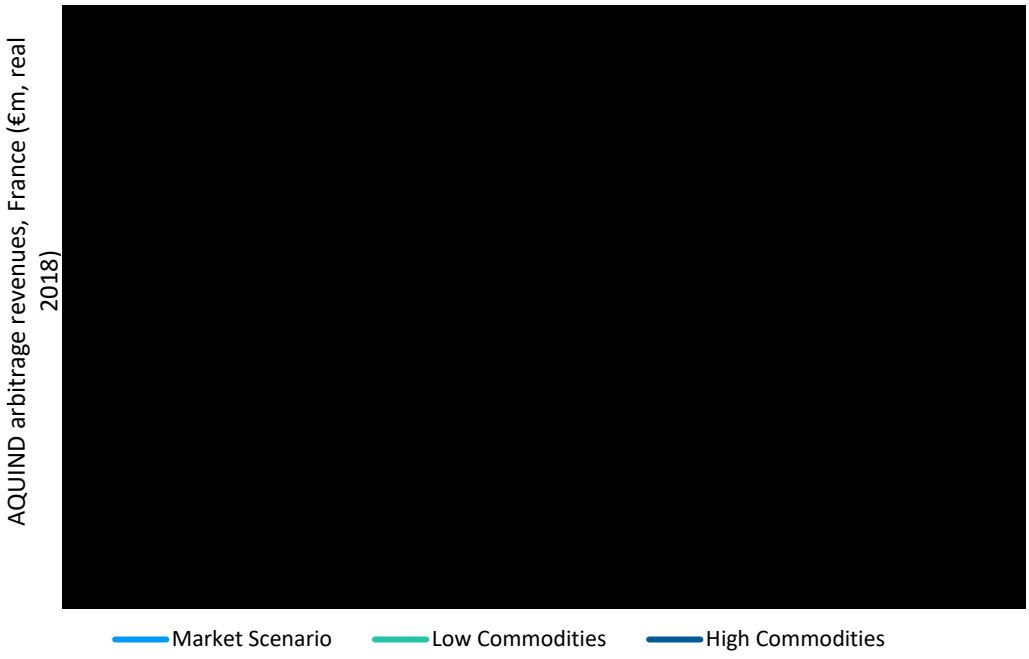


Figure 6-2 AQUIND projected arbitrage revenue for the Exempt Portion of the project, three main scenarios



6.3.2.3 Macroeconomic and policy risk

Government and regulatory decisions have a significant impact on GB, French and wider European wholesale electricity markets. Future regulatory, policy and macroeconomic uncertainty presents revenue risk for AQUIND as an interconnector that relies to a significant extent on market based revenues. Key macroeconomic and policy risks faced by AQUIND include:

- **No Carbon Price Support:** UK carbon policy, Carbon Price Support, is set to end in April 2021. In the AQUIND Market Scenario case, we assume that this policy is extended until the UK Carbon Price exceeds the EU-ETS (expected in the late-2020s). The uncertainty in the future treatment of CPS in GB presents a significant policy risk for AQUIND.
- **Exchange rates**: Exchange rate movements are a significant risk for AQUIND as an investor across currency zones. The nature of cross-border trade, where European power is typically € denominated, creates a significant risk for AQUIND returns. This is further increased through construction where contracts may be awarded in both GBP and €. Whilst some elements of the exchange rate movements can be hedged, the significant uncertainty the market is currently experiencing creates additional costs for AQUIND and its potential investors.
- **Interest rates**: Rise in interest rates might make financing less available and/or more expensive, thus putting more emphasis on the robustness of AQUIND's business case.
- **Capacity markets**: The GB capacity markets provide an opportunity for additional revenues for GB-FR interconnectors, however value fluctuates significantly from auction to auction. AQUIND does not currently assume any value from the French Capacity Market. In addition, the EU is currently progressing regulations on direct cross-border generator participation in Capacity Markets. While the modalities of the arrangements are as yet uncertain (ENTSO-E consulted on its initial proposals in early 2020), there is a risk that not all value generated

by interconnectors is allocated to the interconnector owners, but that some of the value is allocated to either generators or the operators of the capacity mechanisms.

In addition, there are potential "unknown" risks that AQUIND faces in developing a project of this type. In contrast to the four risks above, which are to an extent known and can be partially managed, the "unknown" risks represent genuinely unexpected outcomes that it is not possible to prepare for and which may affect the costs and/or the benefits of the investment. One such example is the current Covid-19 pandemic, which is an unpredictable risk that could not have plausibly been planned for by AQUIND or indeed any other party. The possibility of such risks materialising in the future has two implications:

- First, the actual cost of financing cannot be well known and understood ex-ante. In the case of Covid-19, we now perceive a risk that finance providers will require a higher expected rate of return in order to deploy capital in a more cash-constrained world; and
- Second, the availability of different types of finance (debt and equity) may also change significantly. In the case of Covid-19, we now perceive a risk that a lower share of debt than previously expected may be available.

The implication of the above is that similar "unknown" and unpredictable risks may occur in the future. By transferring all the revenue risk for the Exempt Portion away from network users to AQUIND, the interconnector owner necessitates a sufficient flexibility in its ability to retain future revenues to attract finance providers and to compensate them commensurately with the risk that they hold (and which has been transferred to them from French network users).

6.3.2.4 Operation, Connection and curtailment risk

AQUIND's connection to the GB transmission system will be subject to operating restrictions until 2029. Between 2024 and 2029, under the terms of its connection offer, the connection agreement will be "non-firm" which means that National Grid may limit AQUIND's available export (as well as import) capacity.

During the non-firm offer period National Grid may curtail AQUIND Interconnector due to planned and unplanned outages in certain parts of the grid without financial compensation. The curtailment of AQUIND in GB due to the planned outages can only occur between April and September and the level of curtailment will be known once such outages are scheduled by National Grid. Based on historical average circuit date and the estimated time circuits may be out of service due to non-scheduled outages (faults) National Grid has calculated the probability of forced outages of AQUIND Interconnector due to unplanned faults to be [redacted] hours per year which is around [redacted]% per year. National Grid is due to undertake further stability studies this year to provide further clarity on potential outages. In any case, AQUIND notes that no assurance or financial compensation is provided in relation to such outages and AQUIND therefore retains the risk of further outages.

This will limit the capacity that AQUIND can make available to market participants. This could reduce demand for AQUIND capacity and may require AQUIND to pay curtailment costs to capacity holders.

AQUIND faces full exposure to these curtailment costs.[16]

As a result of the above, AQUIND will bear the operation, connection and curtailment risks (instead of French network users). Finance providers will be willing to take on such risk is they have a prospect of

[16] Subject to, for example, curtailment/firmness caps associated with the allocation of non-exempt capacity. The precise nature of these caps will depend on the timeframe for which curtailment occurs (for example in the forward time, and as defined by the FCA Network Code, firmness exposure is capped at the monthly revenue on the border).

earning an appropriate rate of return, commensurate with bearing such risk. In order to be able to offer such upside opportunity to investors, AQUIND requires an ability to earn and retain a sufficient level of revenues and therefore an exemption from the Use of Revenue regulation.

6.3.3 Construction risk

AQUIND Interconnector will be larger than any other operating or planned interconnector in GB or France.[17] The project size and configuration increases the social welfare and security of supply benefits, compared to a smaller (single monopole) design, but also increases technical complexity and construction costs and therefore the risk of cost overruns. [18]

In addition to the potential cost overruns, these risks may also cause delays to the development of AQUIND Interconnector. As AQUIND will only earn revenue when the project is operational, delays to commissioning represent a serious risk to AQUIND's financial model. With a project of this scale, delays to commissioning or cost overruns represent significant risks with potentially serious financial implications.

As a result of the above, AQUIND will bear the construction risk for the Exempt Portion (instead of French network users). Finance providers will be willing to take on such risk if they have a prospect of earning an appropriate rate of return, commensurate with bearing such risk. In order to be able to offer such upside opportunity to finance providers, AQUIND requires an ability to earn and retain a sufficient level of revenues and therefore an exemption from the Use of Revenue regulation.

6.4 Demonstration of criterion (c) – Ownership

The interconnector must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that interconnector will be built

As discussed in Section 4.2, AQUIND Interconnector is promoted by AQUIND SAS (France), AQUIND Limited (UK) and their 100% holding company AQUIND Energy Sarl in Luxembourg. Each of these entities is a legal person, none of whom has any affiliation with the national TSOs in either GB or France (National Grid or RTE).

Whilst at the date of this application, AQUIND has no direct or indirect links to energy producers, generators or suppliers, it is anticipated that equity investments may be obtained from entities that hold such interests. In future, AQUIND shareholders may also wish to invest in energy produces, generators or suppliers. In all cases, AQUIND will ensure compliance with any applicable ownership unbundling requirements.[19] See Section 4 for further details of AQUIND's ownership structure.

6.5 Demonstrating criterion (d) – Charges

Charges are levied on users of that interconnector

[17] The AQUIND interconnector will be built as two independent symmetrical monopole HVDC links, each with a capacity of 1037.5MW. This scheme provides at least 50% power availability under all credible scenarios, as the two poles are designed to operate completely independently.

[18] The two-monopole design provides an additional security of supply benefit, not present with smaller or single monopole designs.

[19] Including where applicable, those requirements set out in Article 43 of Direction 2019/944 and Section 10A of the Electricity Act 1989.

All of AQUIND's capacity will be allocated through competitive auctions. Interconnector users will be charged based on the results of the auctions, in line with the prevailing regulations.

6.6 Demonstrating criterion (e) – Recovery of costs

Since the partial market opening referred to in Article 19 of Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector

The exemption from the Use of Revenues sought in this Request for Exemption applies only to the Exempt Portion of AQUIND Interconnector (and therefore only a fixed share of revenues generated by the project, which include congestion income from the capacity auction, as well as potential revenues from Capacity Market auctions and ancillary services). In respect of the Exempt Portion that is the subject of this Request for Exemption, AQUIND stresses that it has no access to, or receipt of, revenue recovered through network tariffs in GB or France. Accordingly, no part of the capital or operating costs of the Exempt Portion has been or will be recovered through charges for the use of the transmission or distribution systems in GB or France.

The capital costs of the Exempt Portion will be financed by loans and equity. In arranging this financing, AQUIND Interconnector will act completely independently from the French TSO. In particular, there is no framework for any cashflows to AQUIND Interconnector from regulated transmission charges in France.[20] Any cashflows to AQUIND Interconnector from regulated transmission charges in GB will, in the unlikely event that these materialise, solely relate to capital or operating costs incurred in connection with the non-exempt portion of AQUIND Interconnector.

In this regard, this Request for Exemption is directly analogous to the partial exemption granted to the Piemonte Savoia electricity interconnector.[21] In that case, an exemption was only requested (and was granted) in relation to the Italian portion of one of the two lines that forms the interconnector. In their assessment of that exemption request, the relevant NRAs and the Commission found that criterion (e) was met for the exempt portion of the project. It was not relevant to consider if the criterion was met in respect of the non-exempt portion.

In conclusion, AQUIND's development, capital or operational costs have not been, to date, recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector. Going forward, we will work in good faith with the NRAs to ensure that AQUIND continues to be compliant with this criterion. For the avoidance of doubt, we do not envisage any difficulties in achieving the compliance with this criterion for the Exempt Portion of the project.

[20] AQUIND wishes to draw attention to the COMMISSION DECISION of 9.12.2016 on the exemption of Piemonte Savoia S.r.l (Italy) under Article 17 of Regulation (EC) No. 714/2009 for an electricity interconnector between Italy and France, paragraph 65.

[21] Commission Decision of 9.12.2016 on the exemption of Piemonte Savoia S.r.l (Italy) under Article 17 of Regulation (EC) No. 714/2009 for an electricity interconnector between Italy and France, https://ec.europa.eu/energy/sites/ener/files/documents/2016_piemonte-savoia_decision_en.pdf

6.7 Demonstrating criterion (f) – Competition and Functioning of the internal market and the regulated system

The exemption must not be to the detriment of competition or the effective functioning of the internal market in electricity, or the efficient functioning of the regulated system to which the interconnector is linked

The functioning of the internal market has been considered by taking into account:

- The AQUIND **welfare distribution**, which shows positive social welfare for France and for the EU as a result of more efficient dispatch of electricity.
- Market modelling, which shows an overall reduction in **carbon emissions**.
- The benefits of AQUIND for **competition**.
- The independent assessment of the impact of AQUIND on the **French transmission system**.

6.7.1 Welfare distribution

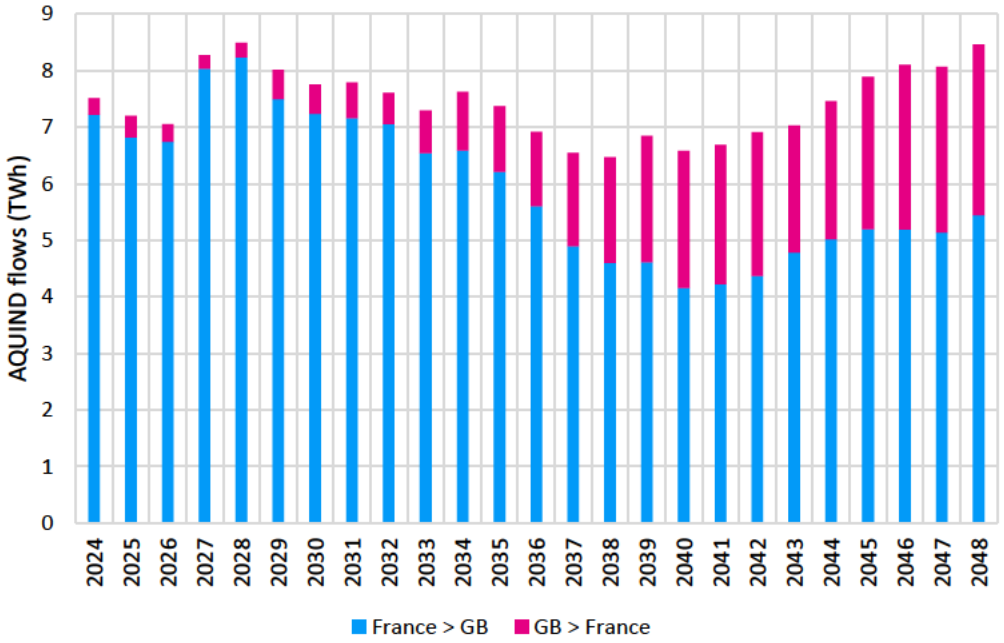
The AQUIND social welfare analysis[22] shows the positive impact of AQUIND Interconnector over the 25 year exemption period. AQUIND is projected to enhance European social welfare by over €1.3bn in the Market Scenario, or €400m excluding the AQUIND costs and benefits, and French social welfare by around €1bn. This outcome is a result of the combined welfare AQUIND creates for producers, consumers and other cross-border infrastructure in GB and France.

Over the modelled period, AQUIND is projected to flow predominantly from France to GB, reflecting the economic price signals. The projected AQUIND flows in the AQUIND Market Scenario are presented in Figure 6-3.[23]

[22] Presented in full in Exhibit 1 and summarised in Section 3.

[23] The price projections in GB and France are a function of the underlying assumptions with respect to capacity and demand which we have set out in full in Exhibit 1.

Figure 6-3 AQUIND projected interconnector flows, AQUIND Market Scenario



AQUIND delivers significant welfare French producers who benefit from an increase in the French wholesale price as a result of exports via AQUIND.

The opposite is true for French consumers who face a welfare reduction in the CBA as a result of comparatively higher prices in France and lower prices in GB as a result of AQUIND. However, the total net benefit for France is positive.

Impact on other electricity interconnectors

AQUIND will increase price harmonisation between GB and France. This will reduce the expected revenue for other GB-FR interconnectors. The change in the GB and French prices will also change the revenue expectation of other interconnectors connecting to third countries. This is an inevitable consequence of price harmonisation across Europe, noting that the latter is one of desired policy goals of the EU.

The change in revenues of other interconnectors, built by the time AQUIND commissions in 2023, is taken into account in the CBA. Even with these impacts, the expected welfare as a result of AQUIND is significant in the AQUIND Market Scenario and High Renewables/Commodities scenarios and when taking account of the Brexit sensitivity. The full breakdown of the CBA sensitivities is provided in Exhibit 1.

6.7.2 Efficient trade and CO_2 reduction

AQUIND will allow for a more efficient dispatch of generation, thereby contributing to the efficient functioning of the French (as well as GB) market. Given the renewables ambition of both countries, efficient cross-border dispatch via AQUIND will help to reduce carbon emissions over the modelling horizon.

The AQUIND Market Scenario market modelling identifies a reduction in the EU and UK CO2 emissions as a result of AQUIND of 2.8 $MtCO_2$.

6.7.3 Impact on the French transmission system

AQUIND employed an independent technical consultancy to assess the impact of the Interconnector on the continental European transmission system.[24] The study focuses on:

- System stability after an outage in the transmission grid (especially in the transient time period).
- Compliance with network security requirements such as the (n-1)-criterion.
- Voltage levels on the transmission grid as a result of increasing import/export capability between France and Great Britain.

The analysis concludes that the introduction of a new Direct Current interconnector "between France and Great Britain has no severe negative impact on the continental European transmission system concerning the aspects taken into account in this study. Any problems that might arise could be managed by the design of AQUIND Interconnector and the respective converter stations itself. In particular, the realisation of AQUIND Interconnector would not cause additional investments in the transmission grid (for instance in order to restore the fulfilment of network security requirements)".

Based on this assessment, AQUIND concludes that the project will not have a material impact on the functioning of the internal system in continental Europe.

[24] The 2020 study, by Consentec GmbH, is provided in full in Exhibit 10.