



**AQUIND Limited**

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## **AQUIND INTERCONNECTOR**

Letter from the Applicant in response to Rule  
17 Request dated 3 March 2021

The Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure)

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Mr Andrew Mahon  
National Infrastructure Planning  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

05 March 2021

Dear Mr Mahon,

**Application by AQUIND Limited for an Order granting Development Consent for the AQUIND Interconnector project**

**Applicant's response to Rule 17 Request for further information**

The following information is provided in response to a Rule 17 Request dated 3 March 2021 for further information by the Examining Authority ("ExA") regarding the financial status of Aquind Limited ("Aquind" or "the company"). Also addressed in this letter are matters in response to the submissions of Blake Morgan LLP on behalf of Mr Geoffrey and Peter Carpenter (REP8-097), which have evidently misunderstood the financial status of the company and the information included in the Exemption Request.

Firstly, we can confirm that Aquind Limited is not insolvent and therefore any suggestions or assertions to the contrary are incorrect. The following statements are made to support this position.

**Audited Financial Statements – 30 June 2019 (REP1-095)**

The last full-year audited financial statements of Aquind Limited for the year end 30 June 2019 were approved by the Board of Directors on 20 May 2020. A clean audit opinion was provided by Deloitte. The audited financial statements were filed with Companies House by the required deadline. For Aquind, the normal year end filing deadline is nine months after the year end, which is 31 March 2020. However, due to the pandemic, the filing deadlines were extended for most of the companies in the UK, including Aquind, to 30 June 2020. Aquind met this revised deadline with audited financial statements filed with Companies House on 2 June 2020.

We draw your attention to three specific matters regarding the last audited financial statements:

**Going Concern assessment.**

As a standard requirement, in completing the annual financial statements for 30 June 2019, the Directors were required to undertake a going concern assessment. This comprised preparation of a 12-month budget which was converted into a financing plan for consideration and approval by the shareholder as sole investor. This exercise was duly completed and the Directors received assurances in writing from both the parent company, Aquind Energy S.a.r.L and OGN Enterprises Limited, a former direct parent company of Aquind, to the effect that all existing loans will be rolled over (i.e. will not be called) and new funding will be provided to finance further stages of project development (see Notes 11 and 12) and the company has put relevant contractual arrangements in place. This information was disclosed in the financial statements for the year end 30 June 2019 in Note 3 on Going Concern.

The same investor and funding approach has been used consistently since the inception of AQUIND Interconnector and will continue to be the means by which the shareholders and group companies will make the required finance available for the development phase. Accordingly, the company does not utilise and/or rely on commercial banks or other third-party financing arrangements or debt to provide finance for the development phase and therefore does not face the risks associated with such facilities.

Separately, as part of their audit process and in support of issuing their audit opinion, Deloitte were required to assess the Director's work and conclusions in support of their going concern assessment. Deloitte undertook the required audit work to satisfy themselves as to the going concern assessment made by the Directors, which is appropriately referenced within their Audit Report.

#### **Profit and Loss and Balance Sheet.**

The financial statements disclose a net loss before taxation for the year of £2,319,056 and a net liability position as of 30 June 2019 of £4,169,207. These financial numbers are not exceptional given the nature and current status of the project. Further, the net loss before taxation does not indicate what assets the company has or whether the company is insolvent or not given the ongoing and confirmed parent company financial support as described above.

As part of financial statement preparation, costs incurred during the development phase of the project are categorised as between direct project costs and administrative expenses. Direct project costs are capitalised and are disclosed in Note 8, Intangible Assets as Development Costs with a carrying value as of 30 June 2019 of £23,316,430. This is routinely assessed before each reporting date.

As the company is in the development phase, there is zero turnover and hence the reported net loss before taxation of £2.3million for the year. The cumulative annual losses disclosed of £4,499,208 give rise to the reported Shareholders deficit and net liability position as of 30 June 2019 of £4,169,207. This represents costs already incurred and paid, which do not impair the Company's ability to meet its future obligations. This financial profile will continue throughout the development and construction phases although the planned addition of new equity investors will likely alter the balance sheet structure and reported financial position.

### **Shareholders Deficit**

As stated and explained above, the reported shareholders deficit as of 30 June 2019 was £4,169,207. In terms of any Balance Sheet test for insolvency, and combined as part of the going concern assessment, the company secured ongoing financial support from its parent company/shareholder (Aquind Energy S.a.r.L and OGN Enterprises Limited).

Effectively, the group companies provide a line of credit to the company necessary to fund the ongoing operations of the company including those necessary to meet its liabilities, other obligations and including, if any, contingent liabilities. Funding is forecasted for a period of not less than 12 months following the approval of the financial statements by the Directors. This total committed funding by the shareholder and group companies is not disclosed specifically in the financial statements but assessed as part of the going concern assessment by the Directors and the auditor. Note that as of 30 June 2019, there were no identified and/or reported contingent liabilities which needed to be disclosed. Combined with the cash flow test above for going concern purposes and which is reviewed and discussed with Deloitte as part of the year end audit process, the Directors conclude that the company is not insolvent.

### **Financial Statements 30 June 2020**

In line with established procedures and the timelines agreed with its auditors, Aquind is currently finalising the year end accounts for the financial year ending 30 June 2020, which are due for submission to Companies House by 30 June 2021 in accordance with the revised reporting deadlines. As in previous years, Deloitte are the company's appointed auditors. The same process as set out above for the prior year accounts 30 June 2019 is being followed by the Directors in support of the going concern assessment and will be disclosed to its auditors.

### **Business and Financing model – Project development phase**

To date, financing for Aquind in relation to the development phase of AQUIND Interconnector has and is planned to be 100% funded by its promoters. That has been set out clearly since the submission of the application for the Development Consent Order. The project promoters have invested and committed to invest £50million in the development of AQUIND Interconnector. Whilst noting that based on the professional advice received blight claims are not envisaged in connection with this application for the Development Consent Order for the reasons explained in the Applicant's response to the Deadline 8 submission on behalf of Mr G and Mr P Carpenter (document reference: 7.9.51), the Directors nonetheless have every confidence that financing will be available to address any such blight claims which are advanced. Additional development phase costs are an inherent risk faced by any promoter of a large infrastructure project, and, as can be clearly seen, significant investment has taken place in the promotion of AQUIND Interconnector to date and there is no rational reason to expect that further funds where required would not be forthcoming, including in respect of any blight claim which may materialise in the future.

With further regard to the submission of Blake Morgan LLP acting on behalf of Mr G and Mr P Carpenter (REP8-097), the leading authority for the balance sheet insolvency test is the Supreme Court decision in *BNY Corporate Trustee Services Limited v Eurosail and others* [2013] UKSC28. This is misinterpreted in the submission of Blake and Morgan LLP.

In summary, the balance sheet test at s.123(2) of the Insolvency Act 1986 is concerned with debts which are presently due and debts falling due from time to time in the “reasonably near future”. It requires the court to be satisfied, on the balance of probabilities, that a company will have insufficient assets to be able to meet all of its liabilities, including prospective and contingent liabilities, as and when they eventually fall due.

As the Supreme Court noted in introduction in *Eurosail*, ‘There is no statutory provision which links section 123(2) of the 1986 Act to the detailed provisions of the Companies Act 2006 as to the form and contents of a company’s financial statements.’

The court will assess whether a company is balance sheet insolvent in the light of the available evidence and circumstances of each individual case, keeping in mind that the more distant the liabilities, the greater the likelihood of intervening events and uncertainties, making it less likely that the balance sheet test for insolvency will be satisfied.

Importantly, the balance sheet test will not be triggered simply on the basis that at a particular point in time, a company’s liabilities exceed its assets. The Supreme Court held in *Eurosail* that the fact that a company’s latest audited balance sheet showed a net deficit did not necessarily mean that the company was “balance sheet insolvent” for the purposes of s123(2).

To illustrate the need to consider the specific circumstances of each case, the Supreme Court indicated that it would be easier to demonstrate that an SPV such as *Eurosail* was insolvent under the s123(2) test than an actively trading company which was making on-going commercial decisions about its business, suppliers, pricing policy and even raising new capital. The current net asset position of such a company would be a less reliable guide to its ability to meet its long-term liabilities, than that of a SPV such as *Eurosail* which was in a “closed system”.

For the s123(2) test to be met, there must be an expectation that a debtor company will not be able to meet its future and contingent liabilities when they fall due. As such, the balance sheet insolvency test is, in effect, more of a medium to long term liquidity test, to be judged on a case by case basis taking into account the company’s wider circumstances. This will involve an assessment of the company’s funding structure and available assets and resources.

### **Equity and Debt raising – Construction phase**

The company has been and is reviewing a number of options to secure longer-term financing for the construction phase of the project comprising both equity and debt. This work has involved discussions with a number of commercial banks and financial institutions which remain ongoing. Significant work on financing requirements has been undertaken in relation to Aquind’s various submissions to regulatory authorities in the UK (Ofgem), France (CRE) and the EU. The objective behind raising equity finance is to broaden the ownership structure by way of securing one (or two) strategic investors to finance the construction phase and to secure the balance of funding by way of raising debt finance. This has been addressed in multiple earlier submissions in very clear terms, including the Funding Statement (both APP-023 and REP6-021) as well as in responses to written questions raised by the Examining Authority. We have been entirely open regarding the approach that is to be taken to securing financing for the construction of the project and in respect of matters relevant to this.

In summary, the company believes that AQUIND Interconnector is an attractive investment opportunity and there is no reason why financing will not be available. Equity and debt raising activities will be undertaken during the remainder of 2021. Further, whilst it is intended that compulsory purchase rights are exercised when commencing the construction stage of the

project and when third-party investment has been secured, this does not mean that the company has to rely on this third-party investment to meet hypothetical blight claims, if such claims are awarded or to be settled prior to the construction stage.

### **Clarifications in respect of the Exemption Request**

In its submission with reference REP8-097, Blake Morgan LLP acting on behalf of Mr G and Mr P Carpenter quote the following statement from the Exemption Request relating to EU Regulation 2019/943:

*"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."*

*"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 Statement)*

This quotation is used to support the contention that Aquind has itself in effect admitted that it is 'on-balance sheet' insolvent. This conclusion is entirely false and shows fundamental lack of understanding of the Exemption. This is also a purposefully selective quotation of the Exemption Request to support that false assertion.

The Statement refers specifically to the **construction stage** of the Project. The development stage (current stage) of the project is fully financed by the current shareholders. This is made clear under section 4.5.1 of the Exemption Request:<sup>1</sup>

*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.*

Most of the €1,426m (approximately £1,231m at the current exchange rate) of CAPEX and DEVEX presented in the Exemption Request will be for Engineering, Procurement, Construction and Installation ("EPCI") contracts with the suppliers of cables and converter stations. The Applicant has stated repeatedly during the Examination (for example in a response to CA1.3.76 of ExA WQ1 (REP1-091)) and also in section 4.6.2 of the Exemption Request that a public procurement tender for this equipment is still ongoing. **The Applicant has not entered into any EPCI contract to date and therefore the 'on-balance sheet' insolvency test is irrelevant as there is no contractual liability at present.**

While it is already clear from the above that Blake Morgan LLP have misunderstood the position of Aquind in the Exemption Request, Aquind believes it will help the ExA if it clarifies the following point in relation to the Exemption Request.

The explanation of risk in regulatory submissions is required to enable the discussion of appropriate rates of return. Each infrastructure development has risks, which are being

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<sup>1</sup> Request for Exemption: AQUIND Interconnector. Section 4 – Project Description:  
[https://www.ofgem.gov.uk/system/files/docs/2020/12/section\\_4\\_-\\_project\\_description.pdf](https://www.ofgem.gov.uk/system/files/docs/2020/12/section_4_-_project_description.pdf)



factored into the costs of the development and expected rates of return, but that discussion does not mean that such a development is not viable. Risks, associated with the construction of AQUIND Interconnector, can be managed. A detailed explanation of that risk assessment was provided to the regulatory authorities as part of the Exemption Request. It was considered commercially sensitive and confidential and was not included by the regulatory authorities in the scope of the public consultation.

The Applicant is not a national Transmission System Operator (TSO), such as National Grid in the UK or RTE in France, and therefore requires structurally different financial arrangements to finance the Project. This is again not unusual, and in no way is a bar to a development consent order being granted to the company to construct and operate AQUIND Interconnector. Eleclink interconnector is one of the examples of such projects to be implemented by non-TSO promoters.

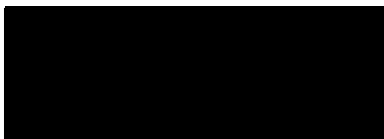
As explained in Section 6.3.2 of the Exemption Request,<sup>2</sup> AQUIND Interconnector faces a number of risks associated with the inherent ex-ante uncertainty of future congestion (and other) revenues that the project will earn over its lifetime. The revenue uncertainty is a common feature of any investment of this type and is a largely unavoidable risk that must be allocated to someone – either to 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 the project, without available network tariff support for a part or the whole of a development, 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 investment.

Therefore, the suggestion in the submission of Blake Morgan LLP that, on the basis of the description of a prospective future scenario within the Exemption Request, Aquind is currently insolvent is, therefore, misconstrued.

### **Conclusion**

In conclusion, the company is solvent and has fully adequate and confirmed funding to meet its current liabilities for the development stage of the project. Since the submission of the last publicly available financial statement, the company has continued all activities necessary to deliver AQUIND Interconnector, including the examination of its application for the Development Consent Order and a public procurement tender in respect of engineering, procurement and construction of the Project, meeting all liabilities associated with both.

Yours faithfully,



**Richard Glasspool**  
**Director**

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<sup>2</sup> Request for Exemption: AQUIND Interconnector. Section 6 – Exemption Criteria:  
[https://www.ofgem.gov.uk/system/files/docs/2020/12/section\\_6\\_-\\_exemption\\_criteria.pdf](https://www.ofgem.gov.uk/system/files/docs/2020/12/section_6_-_exemption_criteria.pdf)



