

European Energies: Gas, Oil, Power & Renewables

PANEL DISCUSSION

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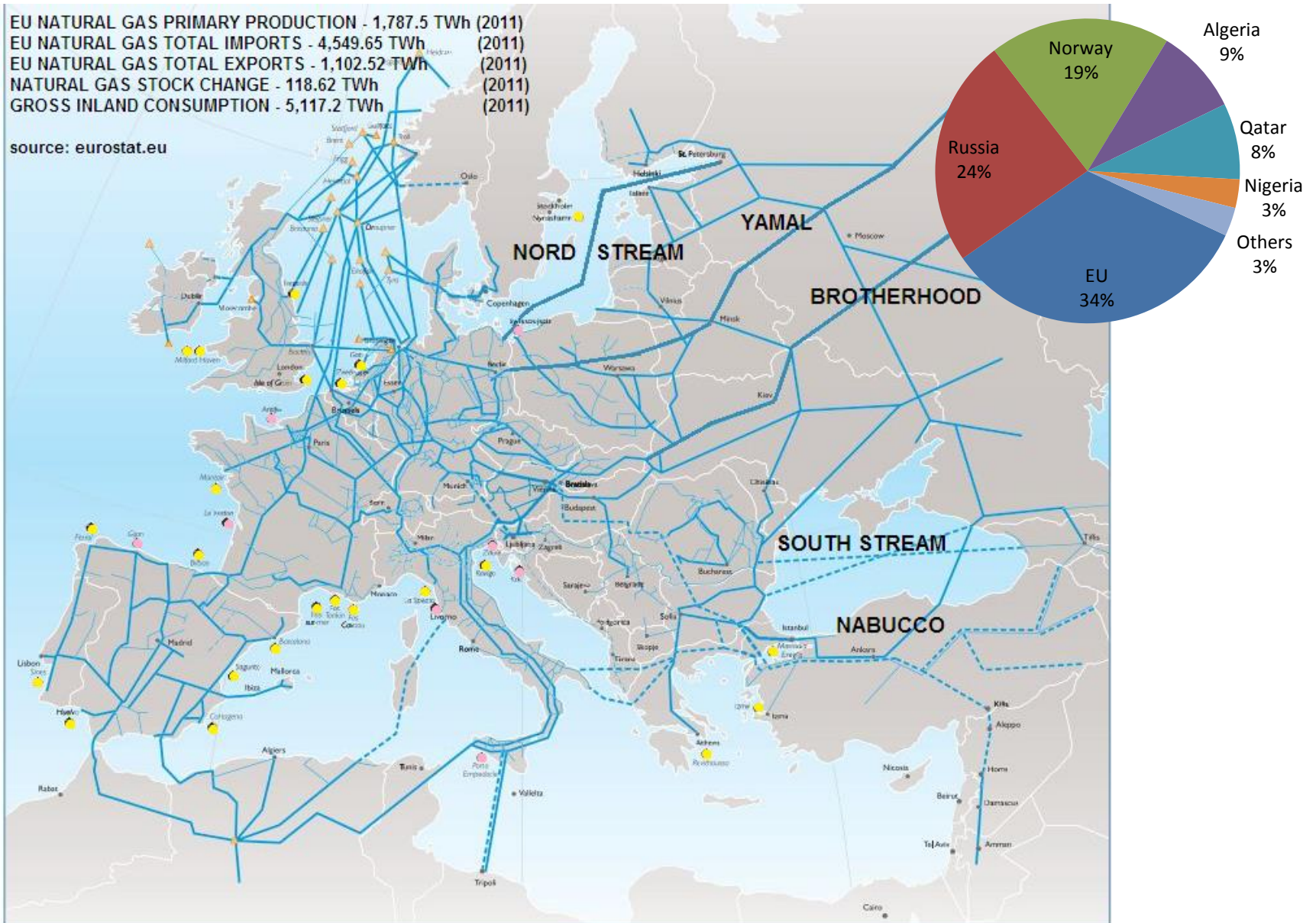
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EU natural gas supplies (2011)

EU NATURAL GAS PRIMARY PRODUCTION - 1,787.5 TWh (2011)
 EU NATURAL GAS TOTAL IMPORTS - 4,549.65 TWh (2011)
 EU NATURAL GAS TOTAL EXPORTS - 1,102.52 TWh (2011)
 NATURAL GAS STOCK CHANGE - 118.62 TWh (2011)
 GROSS INLAND CONSUMPTION - 5,117.2 TWh (2011)

source: eurostat.eu





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GAS TRANSMISSION

LEGAL INFRASTRUCTURE – PREMISE FOR THE IMPLEMENTATION OF ANY ENERGY STRATEGY

ADINA CHILIM-DUMITRIU
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NATURAL GAS TRANSMISSION (I)

Natural gas

- An essential component in EU energy supply, constituting 1/4 of **primary energy supply**
- The **cleanest fossil fuel** → lower emissions
- Its use is growing for power generation and it is the fuel of choice for high efficiency cogeneration
- The efficient movement of natural gas from producing regions to consumption regions requires the existence of a transportation system
- In many instances, natural gas produced from a particular well will have to travel a great distance to reach its point of use
- The transportation system for natural gas consists of a complex network of pipelines, designed to transport natural gas from its origin, to areas of high natural gas demand



NATURAL GAS TRANSMISSION (II)

- the European Union is increasingly more dependent on gas imported from non-EU sources of supply
- thus, the need for cross-border energy projects increases, especially in the field of gas transmission
- cross-border projects: Nabucco, Trans Adriatic Pipeline (TAP), South Stream
- Shah Deniz Consortium led by BP has begun evaluating the offers from Nabucco and TAP – decision to be reached in late June, 2013



Energy strategies require legal strategies

- The existence of a legal strategy – a must in the implementation of any economic/energy strategy
- Unitary principles in the legislations of the states involved in the development of cross-border energy projects – premise that makes it possible to develop and implement large cross-border projects → EU legal framework



EU legal framework for gas transmission

- **DIRECTIVE 2009/73/EC** of the European parliament and of the council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC
- **REGULATION (EC) No 715/2009** of the European parliament and of the council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005
- **REGULATION (EU) No 994/2010** of the European parliament and of the council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC



Transmission system operators

- **Transmission system operator** = carries out the function of gas transmission; responsible for operating, maintenance of, and, if necessary, developing the transmission system in a given area / its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for gas transport;
- Directive 2009/73/EC **unbundling** objective: ensure effective separation of networks (gas transmission systems) from activities of production and supply
- Two options for achieving unbundling: **ownership unbundling** or **independent system operator** option
- In Romania: independent system operator option; the national transmission system is in the public property of the state



Legal aspects relevant for cross-border projects

- Clarification/ establishment at national level of the principles intended to be applied in connection with any cross-border project – may raise constitutional and international law issues (conclusion of interstate treaties), and the need for legislative bodies to regulate/take a political position
- *E.g.*, for the Nabucco project: an **Intergovernmental Agreement** was signed in Ankara, on July 13, 2009, between Romania, Austria, Bulgaria, Hungary and Turkey. Additionally, **Project Support Agreements** were signed between each of the transit countries and the project companies



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Examples of legal issues raised by cross-border energy projects



Owning the relevant assets related to the project:

- public property vs. private property
- private property renders the project more attractive for the financing parties and ensures security instruments
- establishing the principle of private property over the relevant assets may require legislative changes (even at constitutional level)



The principle of stability of the applicable fiscal / legal framework

- the need for predictability of the fiscal/tax and legal framework
- ensuring a higher level of attractiveness for investors/financing parties
- protection necessary to be ensured with the observance of the restrictions applicable to state aid



Ensuring the relevant rights over the lands needed for the implementation of cross-border infrastructures

- ensuring the necessary lands by either expropriation (with the payment of compensation by the state / project partners) or by easements / servitudes (without owner prior consent)
- intervention of the state in certain privately owned projects (if they serve national interests)
- special focus on avoiding the qualification of state interventions as state aid



Clarifying the application of public procurement legislation

- in general, participants in cross-border energy projects are qualified as contracting authorities
- derogations from the obligation to apply the procedure of public procurement may be needed in order to ensure the uniformity of the cross-border project



Uniform legal institutions at the level of the countries participating in the project; Exemptions

- in general, at the level of the European countries the uniformization of the institutional framework was partially ensured by transposing the European Directives into the national legislation
- exemptions from tariffs methodologies / access to transmission system may be granted by regulatory authorities



Cross border gas transmission projects - opportunities for lawyers

- **Complexity:** a cross-border gas transmission project requires expertise in multiple areas of practice: real estate, tax, environmental, regulatory, public procurement etc and in legislation ranging across various degrees of legal force: from primary and secondary national legislation to EU level regulations
- **Close client – lawyer relationship:** the complexity, workload and legal risks of a cross-border gas transmission project requires close collaboration in each transited state with law firms that can provide across-the-board legal services
- **Political factor:** gas transmission projects are usually large and politicized endeavors with the power to shape legislation – lawyers might find themselves drafting laws and government ordinances or amendments thereto
- **Good budget:** high project value + high workload = good fees



Conclusion

Any energy strategy must be correlated with a corresponding legal strategy in order to ensure its successful implementation.



HEUKING KÜHN LÜER WOJTEK
Developments in the European Gas Sector

Istanbul, 23rd May 2013
Marc Baltus, Heuking Kühn Lüer Wojtek
Germany, Düsseldorf

- Hydraulic fracturing (so-called “fracking”)
- Price adjustments in gas supply contracts
- Gas-fired Power Plants
- Gas Storage
- Conclusion and forecast



„Fracking“ in the USA and Europe

- **USA:** Change from an importer to an exporter of fossil fuels.

Today, due to increasing gas volume caused by “fracking”, the gas price is lower than the production costs. Will / can this continue?

- **EU:** Developments at the very beginning (mainly large companies involved), no shale-specific regulations at the overarching EU-level

→ “Fracking” splits Europe

Pro*: Austria, Great Britain, the Netherlands, Poland, Sweden and Germany (Germany intends to introduce a bill to allow “fracking” under certain strict conditions, e.g. in case of implementation of an environmental impact study).

Contra: France, Bulgaria and Romania (the latter have banned the exploration of shale gas).

In 2013, the EU Commission will propose a framework to manage risks, address regulatory issues and provide maximum legal clarity and predictability to market operators and citizens across the EU.

*However, sometimes only under strict conditions/regulations

„Fracking“ – Legal Framework

- Legal requirements and consequences are depending on the individual EU Member State.
 - **Germany:**
 - Permit requirements → sections (§§) 11, 12 BBerG, (§) 8 WHG, (UVPD)
 - Prospecting ≠ winning → diverse permissions and appropriations, see section (§) 6 BBerG
 - Strict liability, sections (§§) 114 ff. BBerG / (§) 89 WHG
 - **Great Britain:**
 - Land use planning permission from the local Minerals Planning Authority (MPA) and environmental permits of the Environment Agency
 - Consulting with statutory consultees (Department of Energy and Climate Change, Health and Safety Executive, Natural England, etc.)
- It is a lengthy process to get all the permissions from the appropriate authorities.
- Reserving the rights in time may be of benefit for first movers, can, however, be very risky as long as regulatory and economic framework is not predictable (see developing offshore wind farms).

Arbitration related to gas price adjustments

- Due to changing market conditions (liberalisation of the European gas market) and the oversupply (also caused by fracking) the gas price at many North European gas hubs has decreased (by up to 30 %).
- Many long term gas import and distribution contracts link the gas price to the development of the oil price. Gas prices which are determined on this basis do not reflect the market price any more.
=> increasing number of arbitral gas price review proceedings (importers vs. producer and/or distributors / industrial consumers vs. importers)
- Parties claim an adjustment of the gas price or a change in system of the price adjustment clauses.



Arbitration and price adjustment clauses – legal advice

- In general, three different types of price adjustment clauses in long term gas supply agreements:
 - Price Variation Clause
 - Price Revision Clause
 - Hardship Clause
- A contract party may want to change price level and/or price adjustment system (e.g. from oil price linked to hub price linked).
- Specific price revision clauses are the preferred tool for price adjustments other than general hardship clauses, although they may limit the adjustment (e.g. adjustments only within certain periods and within a specific range).
- Normally, there is an obligation to negotiate before a request for arbitration can be filed.
- Organisation and proceedings (*ad hoc* or institutional e.g. ICC, DIS, etc.)

Gas-fired Power Plants

- In some countries (e.g. Germany, Netherlands) gas-fired Power Plants have become unprofitable due to a high market-share of Renewable Energies, which affects prices and grid management (e.g. the German Renewable Energy Sources Act regulates a feed-in priority for renewable energies).
- Operators of such power plants
 - do not comply with their investment plans although power plant capacity is needed during peak times.
 - act on these different circumstances by amending other contracts and agreements (e.g. gas supply and grid capacity).
 - discussion on “mothballing” or even the removal of power plants.
 - request for subsidies for the operation of the power plants in such an economically unattractive environment.
- Whereas e.g. in Great Britain there is a “dash for gas”
→ 30 new gas-fired Power Plants by end of 2013

Gas Storage

- Obligation of strategic gas storage according to Directive 2004/67/EC.
=> large investments in gas tanks and underground storages (caverns) in Europe intended
 - Number of natural gas underground storages on 1st January 2012: 134*
 - Usage of (salt) caverns allows recycling of mining capacities.
- Interesting projects that will face a high demand as a high-frequency balancing tool is needed due to unstable consumption (e.g. caused by renewable energy sources).
- Not strictly regulated and also subject to exemptions from regulatory framework possible
- Disadvantage: Few investment incentives in the current market e



Gas Storage – legal framework

EU:

- Directive 2003/55/EC of 26th June 2003
- Guidelines for Good TPA Practice for Storage System Operators (“GGPSSO”)
- Directive 2009/73/EC of 13th July 2009
- Interpretive Note on Directive 2009/73/EC (Third-Party access to storage facilities)

Germany:

- *Mining rights / “surface rights”*
 - Federal Mining Act (BBerG, § 126)
 - Laws pertaining to water and waterways (WHG)
 - German Energy Act (EnWG)
- *Other laws*
 - E.g. Federal Mining Regulation (ABBERGV)
 - Mining regulation on health protection (GesBergV)
 - Regulation on breakdown

Conclusion and forecast

- Hard times for the gas sector to come?
- Harmonisation of the European Energy Policy likely?
- Is it of benefit to be a first mover?



Thank you very much for your attention!

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UK: recent renewable energy developments



Offshore wind, marine and tidal developments
Paul Hally, Shepherd & Wedderburn LLP
May 2013

Our energy sector approach

- Oil – Cairn Energy, Bowleven
- Gas – Bord Gais – Irish independent transmission operator – business separation
- Minerals – Numis Securities (First Quantum Minerals)
- Water – Xylem acquisition of Godwin Pumps, Albion Water successful competition act action
- Waste – Viridor, Aqua Resources Fund
- Power – Scottish Power, RWE, E.On
- Renewables – onshore wind, offshore wind, marine, PV, biomass

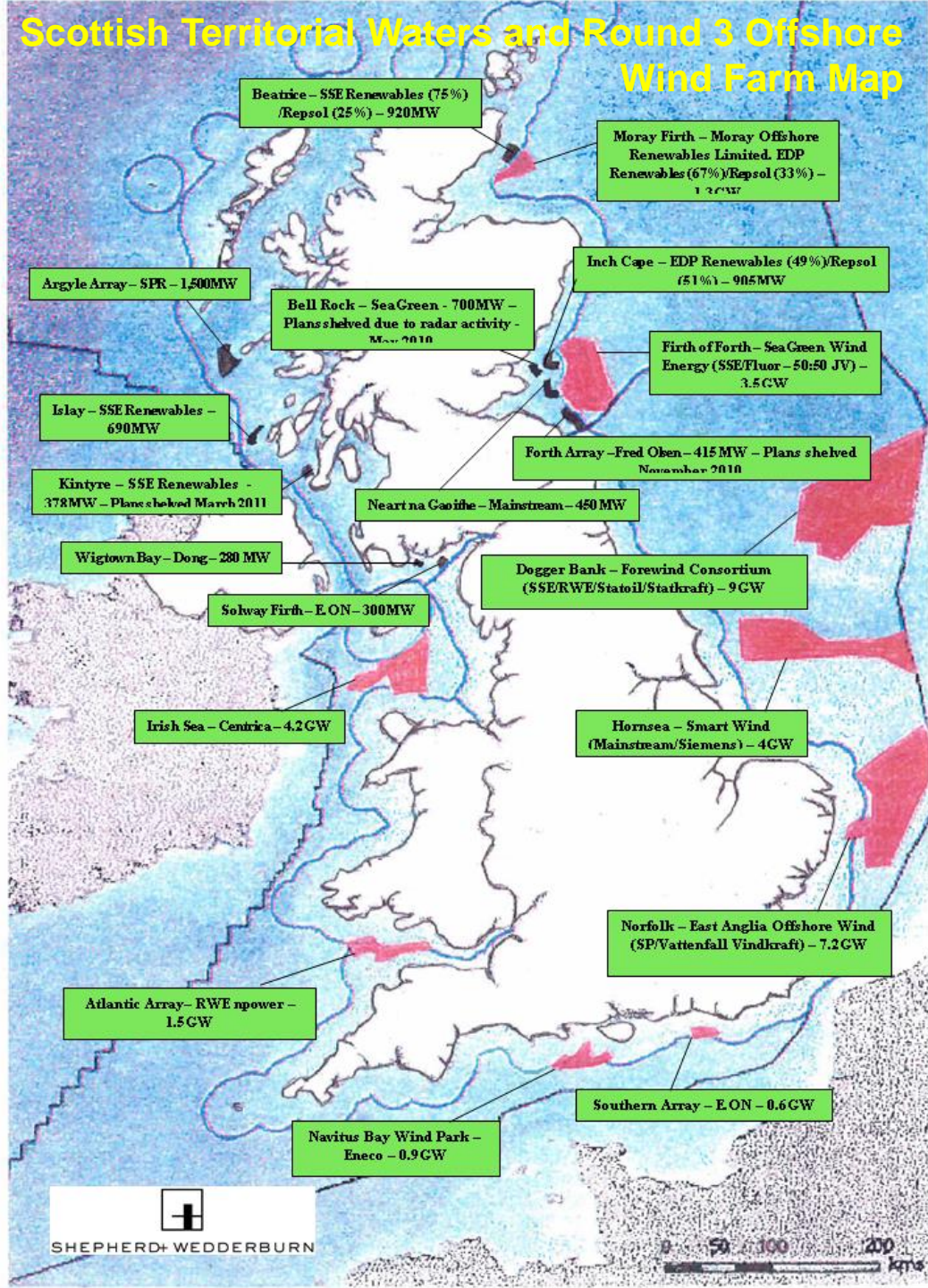


Offshore Wind -The European Context

- Belgium – Thornton Bank phases 2 and 3 construction
- Denmark – Anholt 400MW construction and Kriegers Flak and Horns Rev III to come, further tender round anticipated
- Germany – 2 GW under construction or in operation, 1 GW in 2013 and 3.5GW pipeline
- Ireland – potential exports from Republic of Ireland waters to UK and NI offshore tender round
- Netherlands – ambitious targets require offshore wind deployment



Scottish Territorial Waters and Round 3 Offshore Wind Farm Map



Offshore wind - Overview of the UK

- UK
 - 2012 construction at 9 offshore wind farms e.g Walney, Greater Gabbard, London Array (world's largest at 630 MW)
 - Over 14 GW operational, in construction, consented or in planning
 - Uncertain regulatory framework – Electricity Market Reform
 - Dampening on supply chain investment
 - Energy Bill published and due to become law end 2013



Scale of development opportunity



- Three offshore wind licensing rounds
 - Round 1, close to shore, below 100MW
 - Round 2, deeper water, 350 – 500MW
 - Round 3, zonal development – 1 GW to 9 GW zones
 - Round 1 demonstration – largely built out
 - Round 2 commercial scale – partly built out with significant secondary investment activity in project owners e.g. London Array
 - Dong Energy, Eon and Masdar



- Large offshore zones – consent by The Crown Estate to identify locations for offshore wind project deployment
- Developer identifies locations and develops a series of individual projects – usually 350 – 500 MW blocks
- Environmental consents under the Planning Act 2008 (England and Wales via Planning Inspectorate), Electricity Act 1998 (Scotland via Scottish Ministers)



- Strong consenting regulation – significant legal input to gain consents
- Wayleaving for cable route and onshore substation with significant public consultation
- Grid connection for both radial links to shore and more sophisticated “integrated links”
- Interface issues with competing oil and gas, fisheries and carbon capture and storage interests
- No standardised approach to offshore procurement and construction contracts



Hornsea Zone Met Mast in fabrication yard



- Development phase costs for a project – over £40M
- Zone winners need to raise finance and secondary investment from co-developers is increasing e.g. Siemens and Mainstream in Zone 4 now joined by Dong Energy for initial projects
- Appetite of funders for offshore construction risk – to date all funded on balance sheet until operational
- Financial support mechanism for renewables in flux (Electricity Market Reform)



Vessel support for London Array

- More than 20 vessels per day purely for fuel during construction phase



Use of jack ups for construction of turbines and offshore substations



Why is the Wave and Tidal sector important?

- UK has significant wave and tidal energy resources
- The sector is beginning to move towards commercialisation

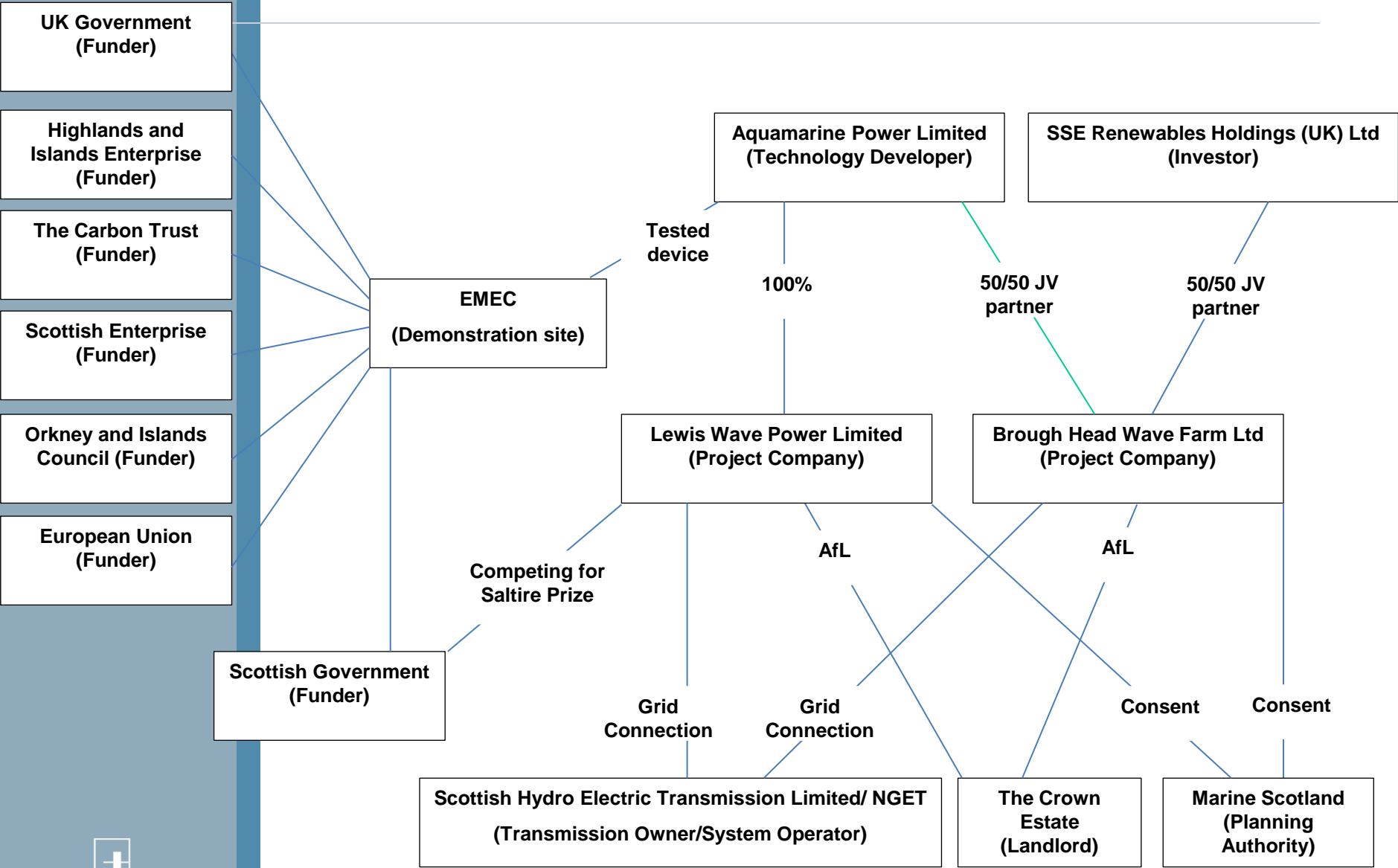
Who are the players involved in the sector?

- Technology Developers
- Investors
- Project Companies
- Funders

First semi commercial Crown Estate leasing round – Pentland Firth – 11 awards



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Any Questions?

