



DETERMINATION OF MERGER NOTIFICATION M/12/008 – SSE / ENDESA

Section 21 of the Competition Act 2002

**Proposed acquisition by SSE plc, through SSE Generation Limited, of
Endesa Ireland Limited**

Dated 17 July 2012

Introduction

1. On 18 June 2012, in accordance with Section 18 of the Competition Act, 2002 ("the Act"), the Competition Authority (the "Authority"), received a notification of a proposed transaction whereby SSE plc ("SSE") would acquire sole control through SSE Generation Limited ("SSE Generation") of Endesa Ireland Limited ("Endesa Ireland").

The Undertakings Involved

The Acquirer

SSE

2. SSE is an energy company with operations in the United Kingdom and the island of Ireland. It is involved in the business of electricity generation in the United Kingdom and the island of Ireland with approximately 11,860MW of electricity generation installed capacity.¹ Approximately 410MW of this installed capacity can be attributed to the State.
3. SSE is a participant in the wholesale gas market in the United Kingdom. SSE, however, does not sell gas in any wholesale market on the island of Ireland. SSE also supplies gas to residential and business customers in the United Kingdom, Northern Ireland (following the acquisition of Phoenix Supply Limited²) and in the State through its wholly-owned subsidiary Airtricity Limited "Airtricity").
4. SSE is also involved in electricity transmission and distribution in northern Scotland and electricity distribution in central and southern England. SSE is not involved, however, in electricity transmission or distribution on the island of Ireland.³
5. SSE also supplies electricity to residential and business customers in the United Kingdom. SSE supplies electricity to residential and business customers in Northern Ireland through its wholly-owned

¹ Installed capacity refers to the maximum generation capacity of a plant at the time of commissioning.

² The Authority cleared this transaction on 15 June 2012. See Authority Determination M/12/008 - Airtricity/Phoenix

³ Electricity transmission and distribution systems encapsulate the infrastructure through which the transmission and distribution of electricity occurs. In the State, Electricity Supply Board ("ESB") is the licensed owner of the electricity transmission system. EirGrid plc, a state-owned commercial company which is independent of ESB, is the designated licensed operator of the electricity transmission system. The electricity distribution system in the State is owned and operated by ESB Networks, a subsidiary of ESB.

subsidiary Airtricity Energy Supply (Northern Ireland) Limited. SSE supplies electricity to residential and business customers in the State through its wholly-owned subsidiary Airtricity.

6. For the financial year ending 31 March 2012, SSE had worldwide turnover of €36,757.4 million⁴ and a turnover in the State for the same period of €[...] million.

SSE Generation Limited

7. SSE Generation is a wholly-owned subsidiary of SSE. It operates under a licence from the Commission for Energy Regulation (the "CER"). SSE Generation reports that it maintains and invests in a portfolio of fossil fuel-fired generation capacity and in energy sourced from renewables. None of these assets are currently located within the State. SSE Generation does not currently generate any turnover in the State.

The Vendor

8. Enel S.p.A is an Italian power company and one of Europe's main utilities. Enel S.p.A is active in the power and gas sectors. It operates in 40 countries with over 97,000 MW of net installed capacity and sells power and gas to around 61 million customers. Enel S.p.A. owns and controls Endesa S.A. ("ESA"), a Spanish company which in turn owns and controls Endesa Generacion S.A. ("EGSA"). ESA and EGSA are joint owners of Endesa Ireland (see below).

The Target

9. The target in this case is Endesa Ireland, a wholly-owned subsidiary of Endesa S.A. ("ESA") and Endesa Generacion S.A. ("EGSA") and operates under a licence from the CER. In 2009, Endesa Ireland commenced operations in the generation and wholesale supply of electricity to the Single Electricity Market ("SEM") on the island of Ireland. In January 2012, Endesa began selling electricity to business customers in the State and it currently supplies electricity to [...] Large Energy Users ("LEUs").⁵ Endesa Ireland does not supply electricity to any residential customers in the State. Endesa Ireland is not licensed to supply electricity to retail customers in Northern Ireland.
10. In the State, Endesa Ireland is engaged in the generation and wholesale supply of electricity to the SEM. It has a total of 1,014 MW dispatchable capacity⁶ (or 1,068 MW installed capacity⁷) distributed across four sites:
 - Tarbert (620MW total installed capacity);
 - Great Island (240MW total installed capacity);

⁴ Based on the European Central Bank €/GBP£ bilateral exchange rate for the 12 month period between 1 April 2011 to 31 March 2012 of €1/GBP£0.8630625.

⁵ As identified in CER Decision Paper CER/10/058 "Review of the Regulatory Framework for the Retail Electricity Market – Roadmap to Deregulation" dated 21 April 2010.

⁶ According to Eirgrid plc, dispatchable capacity refers to the maximum generation capacity of a plant that can be monitored and controlled by transmission system operators. This is illustrated in the Eirgrid document "The Scheduling and Dispatch Processes A Basic Guide," available at www.eirgrid.ie.

⁷ Installed capacity normally refers to the maximum generation capacity of a plant at the time of commissioning.

- Tawnaghmore (104MW capacity);
 - Rhode (104MW capacity);
11. Endesa Ireland also has two brownfield sites at Lanesboro and Shannonbridge which are currently in the process of development.
 12. For the financial year ending 31 December 2011, Endesa Ireland had a worldwide turnover of €90.2 million and a combined turnover in the State for the same period of €90.2 million.

Rationale for the Proposed Transaction

13. The parties submit that “the proposed transaction will enable the SSE to better meet the demand of its supply business and to diversify its generation portfolio by adding the Endesa Ireland’s thermal assets to its existing wind assets, giving it flexibility and reliability.” The parties further submit that “the proposed transaction is also consistent with ESA’s commercial strategy.”

Third Party Submissions

14. The Authority received one third party submission during its Phase 1 investigation from a business located in the State. This submission raised concerns about (a) the rules governing access to the Moyle Interconnector⁸ and (b) the capacity available on the Moyle Interconnector. After confirming the particulars of the submission with that third party, the Authority concluded that the issues raised in the submission relate to regulatory matters. The Authority therefore referred the complaint to the relevant regulators.

Views of Regulators

15. The Authority consulted with the CER in relation to the proposed acquisition. The CER is the independent regulator of the electricity and natural gas sectors in the State. The CER indicated to the Authority that under the current regulatory framework it does not have any concerns regarding the proposed acquisition.
16. The Authority also consulted with the Utility Regulator of Northern Ireland (the “Utility Regulator”) in relation to the proposed acquisition. The Utility Regulator is an independent non-ministerial government department which regulates the electricity, gas, and water and sewage industries in Northern Ireland. The Utility Regulator indicated to the Authority that it does not have any competition concerns regarding the proposed acquisition.
17. The Authority consulted with Eirgrid plc (“Eirgrid”) in its capacity as the Independent Operator of the SEM (jointly operated with the System Operator for Northern Ireland Ltd) and the Transmission Systems Operator in relation to the proposed acquisition. Eirgrid indicated to the Authority that it does not have any concerns regarding the proposed acquisition.

⁸ The Moyle Interconnector, located in Northern Ireland, links the electricity grids of Northern Ireland and Scotland through submarine cables running between converter stations at Ballycronan More in Islandmagee, County Antrim and Auchencrosh in Ayrshire. The link has a capacity of 500MW.

The Single Electricity Market (SEM) on the Island of Ireland

18. The SEM came into operation in 2007 to facilitate the purchase and sale of electricity at the wholesale level on an all-island basis. The SEM is based on the concept of a “gross mandatory pool.”⁹ This requires that all generators with a generation capacity of 10MW or greater must, as part of their licence conditions, make their output available to the SEM. The SEM is jointly regulated by the CER and the Utility Regulator. The Authority gave a detailed description of its understanding of how the SEM operates in its Determination of M/10/026 – ESB/NIE.¹⁰ Further details on the operation of the SEM can be found on the CER website.¹¹

Analysis

19. The proposed transaction does not raise any vertical competitive concerns as there is no vertical relationship between the parties on the Island of Ireland.
20. The activities of both SSE and Endesa Ireland overlap horizontally in: (a) electricity generation and wholesale supply in the SEM and (b) the retail supply of electricity to LEUs in the State.

Electricity Generation and Wholesale Supply in the SEM

21. In paragraph 99 of its determination in M/10/026 – ESB/NIE, the Authority stated that “the regulatory obligations faced by operators in the SEM are sufficiently homogeneous to suggest that there is a single electricity market for electricity generation and the sale of electricity at the wholesale level on the island of Ireland.” The Authority sees no reason to change its view in relation to the relevant product and geographic market for purposes of examining the competitive effects of the proposed transaction in the market for electricity generation and wholesale supply in the SEM.
22. The Authority received market share data based on installed capacity from three sources: Eirgrid, the CER, and the merging parties. The Authority decided to use the data provided by Eirgrid since the SEM is operated by the Single Electricity Market Operator which is part of Eirgrid. The market share data provided by Eirgrid is likely to be the most accurate and appropriate in this instance. Regardless of which data is used, however, it does not affect the conclusions of the competitive assessment of the proposed transaction. The Eirgrid market share data are represented in Table 1 below.

⁹ Electricity Regulation Act 1999 (Market Arrangements for Electricity) Regulations 2003.

¹⁰ Determination dated 29 October 2010 and available at www.tca.ie

¹¹ www.cer.ie

Table 1: Share of Installed Generation Capacity by Company on the island of Ireland, May 2012 (excluding Moyle Interconnector Capacity)

Company	Market Share¹² (%)
ESB	[35 – 40]
AES	[10 – 15]
Endesa	[5 – 10]
SSE (Airtricity)	[5 – 10]
Power NI	[5 – 10]
Viridian	[5 – 10]
Bord Gáis Energy	[5 – 10]
Tynagh Energy	[0 – 5]
Coolkeeragh	[0 – 5]
Synergen	[0 – 5]
Independent Wind Generators	[0 – 5]
Aughinish (Rusal)	[0 – 5]
Edenderry (Bord na Mona)	[0 – 5]
Huntstown Power Company	[0 – 5]
Total	100

Source: Eirgrid in its response to Authority Queries June 2012

23. Table 1 shows that post-transaction SSE will account for approximately [10 – 15%] of the installed generation capacity on the island of Ireland. In essence, SSE will become the second biggest electricity generator in the State after ESB.
24. Market concentration refers to the degree to which production in a particular market or industry is concentrated in the hands of a few large firms. The most commonly used measure of concentration is the Herfindahl-Hirschman index (HHI), which is defined as the sum of the squares of the market shares of all firms participating in the market. Figures calculated based on Table 1 shows that the HHI pre-proposed transaction is 1,638 while the HHI post-acquisition is 1,728. The change in the HHI is 90.
25. The HHI results would put the proposed transaction in Zone A as defined by the Competition Authority's *Merger Guidelines*.¹³ The *Merger Guidelines* states that "Mergers in zone A are less likely to have adverse competitive effects."¹⁴ The Authority has not found any evidence to indicate that the proposed transaction raises any competition concerns in the market for electricity generation and the sale of electricity at the wholesale level on the island of Ireland.

¹² The figures presented in Table 1 are rounded to the nearest whole figure.

¹³ Full details of the HHI are explained in the Competition Authority, 2004, *Notice in Respect of Guidelines for Merger Analysis*, Decision No. N/02/004. This document is available on www.tca.ie.

¹⁴ *Ibid* 22, paragraph 3.10, page 11.

26. In light of the above, the Authority considers that the proposed transaction does not raise competition concerns in the market for electricity generation and wholesale supply in the SEM.

Retail Supply of Electricity to LEUs in the State

27. In its 2009 consultation process, the CER segmented customers on the basis of their connection to the transmission or distribution network and the types of metering available to them.¹⁵ The CER, in its Decision Paper CER/10/058,¹⁶ concluded that the retail supply of electricity should be defined by four market segments:
- LEU (DG 7, 8, 9, 10 & TCON connections);
 - Medium-Sized Business¹⁷ (Low Voltage Maximum Demand – DG 6 connection);
 - Small Business (Low Voltage Non-Maximum Demand – DG 5 connection); and
 - Domestic Customers (DG 1 & 2 connections).
28. Both SSE and Endesa Ireland are active in the retail supply of electricity to LEUs in the State. (Endesa Ireland is not active in any other segment of the retail electricity market in the State.) Although Endesa Ireland has held an electricity supply licence in the State since 2009, it did not begin selling electricity to customers until January 2012.
29. For the purpose of examining the competitive effects of the proposed transaction, the Authority will examine the competitive impact of the proposed transaction in the LEU segment of the retail electricity market in the State. The Authority, however, does not need to come to a definitive view on the relevant product or geographic market because its conclusions concerning the competitive effects of the proposed transaction, outlined below, would be unaffected whether the relevant product market is narrow or broader. (In this instance, broadening the market would result in reducing Endesa Ireland's presence thus further lessening any competitive concerns.)
30. In 2011, SSE had a 14% share (by volume) of the LEU retail electricity segment in the State (see Table 2 below). As Endesa Ireland only commenced operations in the retail supply of electricity in January 2012, there are no market share figures for Endesa Ireland in 2011.

¹⁵ As defined at Appendix B of CER Consultation Paper – CER/09/189 "Review of the Regulatory Framework for the Retail Electricity Market Proposals on a Roadmap for Deregulation".

¹⁶ Review of the Regulatory Framework for the Retail Electricity Market – Roadmap to Deregulation dated 21 April 2010.

¹⁷ Including public lighting (DG3 connections).

Table 2 – Retail Supply of Electricity to LEUs by Volume (MWh), Q4 2011, the State

Company	Market Share (%)
Electric Ireland	48.45
Energia	20.06
SSE (Airtricity)	14.35
Bord Gáis Energy	8.55
Others	7.25
Vayu	0.95

Source: Electricity & Gas Retail Markets Annual Report 2011, CER/12/072.

31. In Q4 2011, there were 1,647 LEU customers in the State. As of June 2012, Endesa Ireland supplies electricity to [...] LEU customers in the State. Thus, Endesa Ireland's current share of the LEU segment of the retail electricity market is less than [0-5]% by customer numbers. Endesa Ireland's share of the LEU segment is also less than [0-5]% by volume (extrapolating from current rate of supply over a full twelve-month period). Post-acquisition, there will therefore be a very small increase in SSE's share of the LEU segment in the State (and consequently, a very small increase and change in the HHI). In the absence of the proposed transaction, of course, Endesa Ireland's share of the LEU market segment may have increased over time. However, given the nature of competition in this market segment and Endesa Ireland's position, there is no reason to believe that, but for the merger, Endesa Ireland would grow to become a sufficiently important factor in the market that the loss of that prospect is of competitive concern. Post-acquisition, SSE will continue to face competition in the LEU segment from suppliers such as Electric Ireland, Energia, Bord Gais Energy, and Vayu; the CER states that customer switching frequently occurs in the LEU segment; and, no regulator or customer has expressed concern about the proposed transaction.
32. In light of the above, the Authority considers that the proposed transaction does not raise competition concerns in retail supply of electricity to the LEU Segment in the State.

DETERMINATION

The Competition Authority, in accordance with Section 21(2) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition whereby SSE plc will acquire sole control through SSE Generation Limited of Endesa Ireland Limited will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, that the acquisition may be put into effect.

For the Competition Authority

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