



## DETERMINATION OF MERGER NOTIFICATION M/18/027 – SSE AIRTRICITY /MARRON ACTIV8

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### Section 21 of the Competition Act 2002

### Proposed acquisition of joint control of Marron Activ8 Energies Limited by SSE Airtricity Limited and Mr. Ciaran Marron (through Jamco Energy Limited)

Dated 10 May 2018

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#### Introduction

1. On 3 April 2018, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed acquisition whereby SSE Airtricity Limited (“SSE”) would acquire 40% of the issued share capital of Marron Activ8 Energies Limited (“Marron Activ8”) from Mr. Ciaran Marron and Ms. Bernadette Marron (the “Proposed Transaction”) and, thus, would exercise joint control over Marron Activ8 together with Mr. Ciaran Marron (through Jamco Energy Limited (“Jamco”)).

#### The Proposed Transaction

2. Marron Activ8 is currently solely controlled by Mr. Ciaran Marron, who holds 44% of the issued share capital of Marron Activ8 directly and 55% of the issued share capital of Marron Activ8 through Jamco<sup>1</sup>. The remaining 1% of the issued share capital of Marron Activ8 is currently held by Ms. Bernadette Marron.
3. The Proposed Transaction is to be implemented pursuant to a share purchase agreement (“SPA”) between SSE, Jamco, Mr. Ciaran Marron, Ms. Bernadette Marron and Marron Activ8 dated 14 March 2018. Pursuant to the SPA, SSE will acquire 40% of the issued share capital of Marron Activ8 from Mr. Ciaran Marron and Ms. Bernadette

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<sup>1</sup> Jamco is wholly owned by Mr. Ciaran Marron.



Marron.<sup>2</sup> Following implementation of the Proposed Transaction, Mr. Ciaran Marron will hold 5% of the issued share capital of Marron Activ8 directly and will continue to hold 55% of the issued share capital of Marron Activ8 through Jamco.

4. The parties also provided the Commission with a draft shareholders' agreement ("SHA") between SSE, Jamco, Mr. Ciaran Marron and Marron Activ8. The parties informed the Commission that, pursuant to the SHA, certain rights will be granted to SSE which will permit SSE to exercise joint control over Marron Activ8 with Mr. Ciaran Marron (through Jamco).

### ***The Acquirer – SSE***

5. SSE is a subsidiary of SSE plc, a Scottish energy company, which is involved in producing, generating, distributing and supplying electricity and gas, as well as other energy-related services, across the United Kingdom and the State. SSE plc is listed on the London Stock Exchange.
6. In the State, SSE is involved in the business of electricity generation, the supply of gas at both wholesale and retail level, and the retail supply of electricity. SSE also provides other energy solution services, such as gas boiler repair, boiler replacement financing, and gas boiler replacement services.
7. SSE also offers solar energy services to customers located in the State. SSE provides, solar thermal systems to residential customers in the State. SSE also provides both solar thermal systems and solar photovoltaic ("PV") systems<sup>3</sup> to commercial customers located in the island of Ireland. The performance of these services is subcontracted by SSE to Marron Activ8.

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<sup>2</sup> Specifically, SSE has agreed to purchase 78 ordinary shares (which constitutes 39% of the issued share capital of Marron Activ8) from Mr. Ciaran Marron and 2 ordinary shares (which constitutes 1% of the issued share capital of Marron Activ8) from Ms. Bernadette Marron.

<sup>3</sup> Solar thermal systems absorb raw energy from the sun and use it directly for heating water or air. Solar PV systems absorb raw energy from the sun and use it to create electricity.



8. For the financial year ending 31 March 2017, SSE plc's worldwide turnover was approximately €34.5 billion, of which approximately €887.2 million was generated in the State.

***Marron Activ8***

9. Marron Activ8, a private limited company incorporated in the State, provides solar thermal systems and solar PV systems to commercial and residential customers located in the island of Ireland. In particular, Marron Activ8 designs, supplies, installs, commissions and maintains solar thermal systems and solar PV systems for:

- SSE's customers based on a contractual arrangement with SSE;
- newly-developed buildings (both residential and commercial) based on contractual arrangements with building developers; and
- end-customers (both residential and commercial) directly.

10. Marron Activ8 also installs non-solar heating systems and carries out control upgrades of non-solar heating systems for domestic and commercial customers located in the island of Ireland. In addition, Marron Activ8 provides wholesale services of solar PV, such as Suntech Solar Modules, Solis String Inverters, ESDEC Mounting Systems and Tesla Powerwall Batteries.

11. For the financial year ending 31 December 2016, Marron Activ8's worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

***Jamco/Mr. Ciaran Marron***

12. Jamco, a private limited company incorporated in the State, is a holding company for Marron Activ8. Jamco does not own or control any entity other than Marron Activ8. Jamco is ultimately solely controlled by Mr. Ciaran Marron. Mr. Ciaran Marron has four businesses active in the State, namely: Wardglade Limited, a construction-based company with a property portfolio; Saturn Heating Limited, which distributes oil boilers to merchants across the State; Hollyhaven Limited, a property holding company; and Marron Activ8.



13. For the financial year ending 31 December 2016, Mr. Ciaran Marron's worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

#### **Rationale for the Proposed Transaction**

14. The parties state in the notification:

*"For SSE, the Proposed Transaction aims at broadening the range of energy services offered to both business and domestic customers. Accordingly, the Proposed Transaction will enable SSE to enhance its renewable energy offerings and improve its competitive position in this segment."*

*"For Ciaran Marron and Marron Activ8 Energies Limited, the Proposed Transaction will enable Marron Activ8 to expand its business activities in Ireland and Northern Ireland and increase brand awareness."*

#### **Third Party Submissions**

15. No submission was received.

#### **Competitive Analysis**

##### **Horizontal overlap**

16. The parties state in the notification that: *"SSE does not perform any solar thermal or solar PV services on the island of Ireland."*<sup>4</sup> SSE expressed the view that: *"SSE and the Target ("Marron Activ8") do not compete. SSE does not perform solar energy services; it simply offers such services to customers and then subcontracts them to the Target ("Marron Activ8"), while retaining a principle contractor or project manager role"*.<sup>5</sup>
17. The Commission's investigation showed that SSE offers solar energy services to customers on its website. Therefore, from a customer's perspective, customers can purchase these services from SSE, Marron Activ8 or other suppliers who either directly or indirectly provide these services to customers located in the State. In addition, the

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<sup>4</sup> Section 4.1 of the notification.

<sup>5</sup> Correspondence from SSE to the Commission dated 4 May 2018.



Commission considers that SSE could potentially decide to subcontract to an alternative supplier the performance of the solar energy services that it offers to customers located in the State. In those circumstances, SSE would potentially compete with Marron Activ8.

18. Therefore, the Commission considers that there is a horizontal overlap between the parties' activities with respect to the provision of solar energy services in the State, i.e., the provision of solar thermal systems<sup>6</sup> and solar PV systems<sup>7</sup>.
19. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant product markets, since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the precise relevant product market is defined narrowly (i.e., (i) the provision of solar thermal systems, and (ii) the provision of solar PV systems) or broader (i.e., the provision of solar energy systems<sup>8</sup>). In order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the potential narrow relevant product markets (i.e., (i) the potential market for the provision of solar thermal systems, and (ii) the potential market for the provision of solar PV systems).
20. Similarly, the Commission does not need to come to a definitive view on the precise relevant geographic market in this instance since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the precise relevant geographic market is national or broader than the State. However, in order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact on a national basis.
21. In conclusion, the Commission has analysed the likely impact of the Proposed Transaction on competition by reference to: (i) the potential market for the provision

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<sup>6</sup> Including acquiring customers, project managing, and providing the design, installation and maintenance of solar thermal systems.

<sup>7</sup> Including acquiring customers, project managing, and providing the design, installation and maintenance of solar PV systems.

<sup>8</sup> Including acquiring customers, project managing, and providing the design, installation and maintenance of solar thermal systems and solar PV systems.



of solar thermal systems in the State, and (ii) the potential market for the provision of solar PV systems in the State.

*The provision of solar thermal systems in the State*

22. SSE currently has a small presence in the State with respect to the provision of solar thermal systems to end-customers in the State. SSE informed the Commission that it offers solar thermal systems to end-customers and then subcontracts the performance of those services to Marron Activ8. SSE considers that its role in relation to these end-customer contracts is to act as a project manager. Marron Activ8 informed the Commission that the total share of SSE and Marron Activ8 with respect to the provision of solar thermal systems in the State is approximately [...].<sup>9</sup>
23. Following implementation of the Proposed Transaction, SSE and Marron Activ8 will continue to compete with a number of alternative suppliers of solar thermal systems to end-customers in the State, either directly or through third parties. These alternative suppliers include: ESB Electric Ireland Limited, ESB Networks DAC, Viridian Energy Ltd (“Energia”), The Energy Centre, L.V.P. Renewables Limited, Warik Energy Limited, Alternative Energy Ireland, Nextgenpower Limited (the solar panel team), and Actavo (Ireland) Limited. There are also a large number of individual contactors registered with Sustainable Energy Authority Ireland (“SEAI”) who will provide solar thermal systems directly to end-customers in the State.
24. Therefore, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns with respect to the provision of solar thermal systems in the State.

*The provision of solar PV systems in the State*

25. SSE currently has a small presence in the State with respect to the provision of solar PV systems to end-customers in the State. SSE informed the Commission that it offers solar PV systems to end-customers and then subcontracts the performance of these services to Marron Activ8. SSE considers that its role in relation to these end-customer contracts

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<sup>9</sup>Marron Activ8’s estimated market share is based on the total number of solar thermal systems installed in the State in 2017. The parties informed the Commission that Marron Activ8 installed [...] solar thermal systems in the State in 2017, which includes the sub-contracted business from SSE.



is to act as a project manager. Marron Activ8 informed the Commission that the total share of SSE and Marron Activ8 with respect to the provision of solar PV systems in the State is approximately [...]%.<sup>10</sup>

26. Following implementation of the Proposed Transaction, SSE and Marron Activ8 will continue to compete with a number of alternative suppliers of solar PV systems to end-customers in the State, either directly or through third parties. These alternative suppliers include: ESB Electric Ireland Limited, ESB Networks DAC, Energia, the Energy Centre, L.V.P. Renewables Limited, Warik Energy Limited, Alternative Energy Ireland, Nextgenpower Limited (the solar panel team), and Actavo (Ireland) Limited.
27. Therefore, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns with respect to the provision of solar PV systems in the State.
28. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State.

### **Vertical relationship**

29. There is currently an existing vertical relationship between SSE and Marron Activ8, whereby SSE subcontracted the performance of the following services to Marron Activ8 in 2017 in the island of Ireland:
  - the design, supply, installation, commission and maintenance of solar thermal systems;<sup>11</sup>
  - the provision of solar thermal/solar PV services and associated oil boiler and heating control upgrades for a windfarm project in Galway; and
  - the once-off provision of rooftop solar PV services for a non-residential customer located in Belfast.

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<sup>10</sup> Marron Activ8's estimated market share is based on the total electricity generated from solar PV systems installed in the State in 2017. The parties informed the Commission that Marron Activ8 installed [...]KWp solar PV systems in the State in 2017, which includes the sub-contracted business from SSE.

<sup>11</sup> This includes solar thermal services for SEAI deep retrofit projects.



30. The parties state in the notification that approximately €[...] of Marron Activ8's total turnover in 2017 of €[...] was generated from the performance of solar energy services subcontracted to it by SSE.
31. The Commission considers that the Proposed Transaction does not give SSE the ability or incentive to foreclose Marron Activ8's competitors from acquiring customers, project managing, and providing the design, supply, installation, commission and maintenance of solar energy services to end-customers in the State, for the following reasons:
- SSE does not currently sub-contract the performance of its solar energy services to any third parties other than Marron Activ8 in the State. Currently, SSE sub-contracts the performance of all of its solar energy services (i.e., the provision of solar thermal systems and solar PV systems) to Marron Activ8;
  - As indicated in paragraphs 22 and 25 above, following implementation of the Proposed Transaction, the estimated combined market share of SSE and Marron Activ8 with respect to the provision of solar thermal systems and solar PV systems would be approximately [...]%; and
  - As indicated in paragraphs 23 and 26 above, following implementation of the Proposed Transaction, there will continue to be a number of competitors of Marron Activ8 active in the potential markets for the provision of solar thermal systems and of solar PV systems in the State, such as ESB Electric Ireland Limited, ESB Networks DAC, Energia, the Energy Centre, L.V.P. Renewables Limited, Warik Energy Limited, Alternative Energy Ireland, Nextgenpower Limited (the solar panel team), and Actavo (Ireland) Limited.
32. Therefore, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

### **Conclusion**

33. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

### **Ancillary Restraints**





34. The SHA contains covenants providing that the shareholders of Marron Activ8 shall not, for as long as they remain shareholders of Marron Activ8 and for a specified period thereafter, compete with Marron Activ8 on the island of Ireland, solicit employees of Marron Activ8 or of the other shareholders of Marron Activ8 or solicit customers of Marron Activ8. The duration of the aforementioned covenants does not exceed the maximum duration acceptable to the Commission and, given the particular nature of the Proposed Transaction, the Commission considers these covenants to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.



## **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition, whereby SSE Airtricity Limited would acquire 40% of the issued share capital of Marron Activ8 Energies Limited from Mr. Ciaran Marron and Ms. Bernadette Marron, and, thus, would exercise joint control over Marron Activ8 Energies Limited together with Mr. Ciaran Marron (through Jamco Energy 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 and Consumer Protection Commission

**Brian McHugh**  
**Member**  
**Competition and Consumer Protection Commission**