



DETERMINATION OF MERGER NOTIFICATION M/19/025 EP UK INVESTMENTS LIMITED – TYNAGH ENERGY LIMITED

Section 21 of the Competition Act 2002

Proposed acquisition by EP UK Investments Limited of sole control of Tynagh Energy Limited.

Dated 30 September 2019

Introduction

1. On 23 August 2019, 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 transaction whereby EP UK Investments Limited (“EPUK”), a wholly-owned subsidiary of Energetický a průmyslový holding (EPH) would acquire sole control of Tynagh Energy Limited (“Tynagh”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction will be implemented pursuant to a share purchase agreement dated 22 August 2019 (the “SPA”), whereby EPUK will acquire [...] % of the share capital of Tynagh such that, following the Proposed Transaction, EPH will have sole control of Tynagh for the purposes of the Act.
3. One of Tynagh’s three existing shareholders, Mountside Partners Ltd. (Mountside), will hold the remaining [...] % of the share capital of Tynagh. Mountside will have [...].



The Undertakings Involved

The Acquirer – EP UK Investments Limited

4. EPUK is a wholly owned subsidiary of EPH. EPH is a Prague based energy group, with operations across Czechia, Slovakia, Germany, Italy, Hungary, Poland and the United Kingdom.
5. EPH operates on the island of Ireland primarily through AES Ballylumford Limited (“ABL”) which operates the Ballylumford gas fired power station near Larne in Northern Ireland, and AES Kilroot Power Limited (“KPL”) which operates the Kilroot thermal dual coal/oil fired power station with a battery storage facility near Carrickfergus in Northern Ireland. Both are active in the wholesale generation of electricity as well as the supply of ancillary and balancing services. EPH acquired sole control of ABL and KPL on 12 June 2019.¹
6. For the financial year ending 31 December 2018, EPH generated worldwide turnover of €[...], of which approximately €[...] was generated in the State through [...]. [...] has no involvement in the generation and wholesale supply of electricity.
7. For the financial year ending 31 December 2018, when adjusted to take account of the acquisitions of ABL and KPL, EPH’s total turnover in the State was approximately €[...], with ABL and KPL accounting for aggregate turnover in the State of approximately €[...].²

The Target – Tynagh Energy

8. Tynagh is a privately held company, incorporated in the State. Tynagh operates a 400-megawatt Combined Cycle Power Plant (“CCGT”) electricity power plant at Derryfrench, Tynagh, County Galway.
9. For the financial year ending 31 December 2017, Tynagh generated worldwide turnover of approximately €[...], [...].

¹Approved by the European Commission on 4 June 2019. See Case M.9372 *EPH/AES Ballylumford/AES Kilroot Power*, available at: https://ec.europa.eu/competition/mergers/cases/decisions/m9372_54_3.pdf.

² The total worldwide turnover generated by ABL and KPL in the most recent financial year was approximately €[...]. <https://www.revenue.ie/en/tax-professionals/tdm/value-added-tax/part03-taxable-transactions-goods-ica-services/Goods/goods-electricity-market.pdf>.



Rationale for the Proposed Transaction

10. The Parties state in the notification:

“the Proposed Transaction provides EPH with the opportunity, through EPUK, to develop its presence in the energy sector in the island of Ireland, while consolidating its position as a long-term strategic investor in the energy industry through territorial expansion in a gradually integrating EU energy market.”

Third Party Submissions

11. No submission was received. However, the Commission notified the Commission for Regulation of Utilities (“CRU”) of the Proposed Transaction. CRU did not raise any competition issues with the Commission.

Competitive Analysis

Integrated Single Electricity Market (I-SEM)

12. Electricity on the island of Ireland is traded on the wholesale electricity market. This is where generators and suppliers trade electricity before it is sold on to consumers. The wholesale electricity market currently in operation on the island of Ireland is known as the I-SEM.

13. In 2018, the I-SEM came into operation as a redesign of the Single Electricity Market (SEM), which since 2007 ensured the electricity market in the Republic of Ireland and Northern Ireland operates on an all-island basis. Included in the I-SEM are the:

- Day-Ahead Market – Allows for trading before the delivery of power.
- Intraday Market – Allows market participants to alter their bids close to the time of power delivery.
- Balancing Market – Ensures that energy supply equals energy demand.



- Forwards Market – Allows participants to spread their financial risk through contracts for differences where a price is struck for a quantity of energy delivered on a future day. Contracts for differences fix price by reference to the difference between the fixed contract price and the market price. This difference is paid after the trading period.
 - Capacity Market – Capacity providers receive payment through the Capacity Payment Mechanism for being available to generate electricity when required by the system.
14. The CRU and the Northern Ireland Authority for Utility Regulation (“NIAUR”) through the Single Electricity Market Committee (“SEMC”) jointly regulate the I-SEM. The SEMC oversees the design and implementation of the I-SEM and makes decisions on licenses and market codes. The CRU and NIAUR are responsible for the administration of market codes, licensing of market operators and monitoring the operation of the I-SEM.
15. The Single Electricity Market Operator (SEMO), a joint venture between the Transmission System Operator (“TSO”) of the Republic of Ireland, Eirgrid plc (“Eirgrid”), and the TSO for Northern Ireland, System Operator for Northern Ireland Limited (“SONI”) operate the I-SEM. Responsibilities for market operations, settlement and credit risk management are split between the TSOs, SEMO and the (European) Joint Allocation Office³. Further details on the I-SEM can be found on the SEMC website.⁴

Horizontal Overlap

16. There is a horizontal overlap in the generation and wholesale supply of electricity in the I-SEM.
17. The European Commission has previously considered the generation and wholesale supply of electricity as one distinct product market, defining it as the:

³ The Joint Allocation Office is a joint service company of twenty TSOs from seventeen countries in Europe.

⁴ <https://www.semcommittee.com/isem-project>



“domestic generation of electricity at power stations within a certain geographic market as well as the electricity that is physically imported into this geographic market via interconnectors to be sold on to retailers.”⁵

18. In addition, previous European Commission decisions⁶ have made no distinction between the different sources of electricity within the wholesale electricity market.
19. The predecessor of the Commission, the Competition Authority noted in M/10/026 – ESB/NIE 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.”⁷

20. In M/12/008 – SSE/Endessa⁸, the Competition Authority followed the same approach in establishing its view of the relevant product and geographic market and analysed the competitive effects of the transaction in the market for electricity generation and wholesale supply in the SEM.
21. As mentioned in paragraph 13 above, the SEM was replaced by a new wholesale market, the I-SEM in 2018. The SEMC noted in a *2015 I-SEM Discussion Paper* that the market

⁵Please see, for example, European Commission decision in *Case No COMP/M.7850 – EDF/CGN/NNB Group of Companies*, which can be accessed at: https://ec.europa.eu/competition/mergers/cases/decisions/m7850_429_3.pdf; *Case No COMP/M.7137 – EDF/Dalkia en France*, which can be accessed at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7137; and *Case No COMP/M.6984 – EPH/Stredoslovenska Energetika*, which can be accessed at: https://ec.europa.eu/competition/mergers/cases/decisions/m6984_20131120_20310_3409627_EN.pdf.

⁶Please see for example, European Commission decision in *Case No COMP/M.7850 – EDF/CGN/NNB Group of Companies*, which can be accessed at: https://ec.europa.eu/competition/mergers/cases/decisions/m7850_429_3.pdf and *Case No COMP/4517 – Iberdeloia/Scottish Power*, which can be accessed at: https://ec.europa.eu/competition/mergers/cases/decisions/m4517_20070326_20310_en.pdf.

⁷Please see for example, merger determination *M/10/026 – ESB/NIE*, which can be accessed at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-10-26-ESB-NIE-Determination.pdf>.

⁸Please see for example, merger determination *M/12/008 – SSE/Endessa*, which can be accessed at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-12-008-SSE-Endesa-Determination.pdf>.



zone of the I-SEM remains the all-island wholesale market, just as had been the case in the SEM.⁹

22. 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 precise relevant markets. The Commission's conclusion on the likely competitive impact of the Proposed Transaction will be unaffected regardless of whether the I-SEM is distinguished into the separate segments as described in paragraph 13.
23. For the purposes of this determination, the Commission has followed the approach applied in the previous cases and assessed the likely competitive impact of the Proposed Transaction on the potential product market for the supply of electricity generation capacity.
24. The market shares of the parties in relation to the supply of electricity generation capacity on the island of Ireland is presented in Table 1, below.

⁹I-SEM Market Power Mitigation Discussion Paper, which can be accessed at: <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-15-031%20I-SEM%20Market%20Power%20Discussion%20Paper.pdf>.



Table 1: Share of generation capacity (including interconnector capacity), island of Ireland 2018

Supplier	By installed capacity	
	Megawatts (MW)	% Share
EPH	1,644	10.3%
Tynagh	400	2.5%
Combined	2,044	12.8%
Market Total	15,985	100%

Source: Parties' share based on Eirgrid All-island Generation Capacity Statement 2018-2027.¹⁰

25. According to the information provided by the Parties, outlined in Table 1, EPH operates 1,644 Megawatts (MW) of installed generation capacity on the island of Ireland. Tynagh accounts for 400 MW of installed generation capacity on the island of Ireland.
26. On this basis, following implementation of the Proposed Transaction, the Parties' combined share of generation and wholesale supply of electricity on the island of Ireland is 12.8%, with an increment of 2.5% to EPH's capacity.
27. The Commission notes that there are currently (and there would remain following implementation of the Proposed Transaction) a number of strong competitors active in the market for generation and wholesale supply of electricity on the island of Ireland.
28. For instance, ESB states that it accounts for 43% of electricity generation capacity in the I-SEM.¹¹ SSE Airtricity operates over 2,000 MW of generation capacity on the island of

¹⁰The notification states that the total installed capacity on the island of Ireland has been calculated by reference to Annex 2 of the Eirgrid All-island Capacity Statement 2018-2027, which is available at: http://www.eirgridgroup.com/site-files/library/EirGrid/Generation_Capacity_Statement_2018.pdf.

¹¹Available at: <https://www.esb.ie/who-we-are/about-esb>.



Ireland.¹² Therefore, based on the market total figures from Table 1, SSE Airtricity accounts for 12.5% of installed generation capacity on the island of Ireland.

29. Furthermore, the Proposed Transaction takes place in a market with an established framework of regulatory bodies as described in paragraphs 14 and 15. The stated principal objective of the SEMC is to:

“protect the interests of consumers of electricity wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with the sale or purchase of electricity through the SEM.”¹³

30. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns with the generation and wholesale supply of electricity on the island of Ireland.

Vertical overlap

31. The Parties have stated in the notification that there is no vertical relationship between the Purchaser and the Target. The Commission has not identified any vertical relationship between the Parties. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

32. 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

33. No ancillary restraints were notified.

¹²Available at: <https://ireland.sse.com/about-us/>.

¹³Available at: <https://www.semcommittee.com/about-us>.



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 EP UK Investments Limited, a wholly-owned subsidiary of Energetický a průmyslový holding (EPH) would acquire sole control of Tynagh 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