



DETERMINATION OF MERGER NOTIFICATION M/21/062 – FLOGAS/NATURGY

Section 21 of the Competition Act 2002

Proposed acquisition by Flogas Natural Gas Limited of Naturgy Limited

Dated: 15 December 2021

Introduction

1. On 5 November 2021, 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 Flogas Natural Gas Limited (“Flogas”), a wholly-owned subsidiary of DCC plc (“DCC”), would acquire sole control of Naturgy Limited (“Naturgy”) and its subsidiaries Naturgy Energy Limited and Naturgy Energy (UK) Limited (together with Flogas, the “Parties”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of a share purchase agreement dated 4 November 2021 between Flogas and Naturgy Aprovevisionamientos S.A. (the “Seller”) (the “SPA”). Under the terms of the SPA, Flogas will acquire the entire issued share capital of Naturgy from the Seller. Following completion of the Proposed Transaction, Naturgy will be a wholly-owned direct subsidiary of Flogas and thus a wholly-owned indirect subsidiary of DCC.

The Undertakings Involved

The Acquirer – DCC/Flogas

3. Flogas is a wholly-owned subsidiary of DCC, an Irish registered public limited company whose shares are traded on the London Stock Exchange.¹ DCC is the parent company of a group of companies which is organised and managed in four separate business divisions as follows:

¹ For more information, please see: <https://www.dcc.ie/>



- DCC LPG,² a supplier of liquid petroleum gas (“LPG”) in cylinder and bulk format to residential, commercial, and industrial customers;
 - DCC Retail & Oil,³ a supplier of commercial fuels, heating oils and related products and services in eight countries across Europe. In the State, DCC Retail & Oil supplies commercial fuels and related products through its wholly-owned subsidiaries, Emo Oil Limited, Jones Oil Limited and Campus Oil Limited;
 - DCC Healthcare,⁴ a supplier of products and services to healthcare providers and health and beauty brand owners; and
 - DCC Technology,⁵ which trades as Exertis,⁶ a distributor of consumer, business and enterprise technology products and services to retailers, resellers and integrators.
4. Flogas operates under the DCC LPG business division which is solely controlled by DCC. Flogas supplies LPG, natural gas and electricity to customers across the island of Ireland. It supplies consumers as well as business customers in several sectors including the industrial, commercial, domestic, catering, agricultural and automotive sectors.
5. For the financial year ending 31 March 2021, DCC’s worldwide turnover was approximately €15.75 billion, of which approximately €1.06 billion was generated in the State.

The Target – Naturgy

6. Naturgy is a private limited company incorporated in the State. Currently, it is a wholly-owned direct subsidiary of the Seller, which is a Spanish-based supplier of natural gas and electricity to customers worldwide.⁷
7. Naturgy has subsidiaries in the State⁸, the United Kingdom⁹ (the “UK”), and Singapore^{10, 11}. Naturgy supplies electricity, natural gas and energy services to business customers in the State and the UK.

² For more information, please see: <https://www.dcc.ie/our-business/lpg>

³ For more information, please see: <https://www.dcc.ie/our-business/retail-and-oil>

⁴ For more information, please see: <https://www.dcc.ie/our-business/healthcare>

⁵ For more information, please see: <https://www.dcc.ie/our-business/technology>

⁶ For more information, please see: <https://www.exertis.com/>

⁷ For more information, please see: <https://www.naturgy.com/en/home>

⁸ Naturgy Energy Limited (company registration number 541493); and, Naturgy LNG Marketing Limited (company registration number 585702)

⁹ Naturgy Energy (UK) Limited (company registration number 07232701).

¹⁰ Naturgy LNG Singapore PTE Limited (company registration number 201703123K).

¹¹ Naturgy LNG Marketing Limited and Naturgy LNG Singapore PTE Limited are not included in the scope of the Proposed Transaction.



8. Naturgy also provides additional services to these business customers, such as renewable energy supply management services, installation of onsite renewable energy generation facilities, assisting renewable energy generators in finding a route to market and renewable energy supply management and corporate power purchase agreements.
9. For the financial year ending 31 December 2020, Naturgy's worldwide turnover was approximately €110 million, of which approximately €[...] was generated in the State.

Rationale for the Proposed Transaction

10. The Parties state the following in the notification:

“DCC/Flogas wishes to expand into gas and electricity markets in the State [...]. The Proposed Transaction will diversify DCC/Flogas' gas and electricity supply businesses to allow it to compete more effectively and efficiently. In addition, [...].”

Third Party Submissions

11. No third party submissions were received.

Industry Background – Natural gas

12. Natural gas is a commodity which is extracted from production fields globally and within the State. It can be transported through pipelines or transported in ships designed to carry liquified natural gas (LNG).¹² In terms of the transport of natural gas, the State and the UK are heavily interconnected. The State is connected to Great Britain through two separate sub-sea interconnector gas pipelines and to Northern Ireland through the South-North Pipeline.
13. Up until the end of 2015, the State imported approximately 95% of all of its natural gas requirements from the UK via sub-sea interconnectors. In December 2015, commercial gas from the Corrib gas field off Co. Mayo began production and now provides up to 60% of peak day gas demand on the island of Ireland. Although the State now has indigenous gas sources, the wholesale price of natural gas continues to be set by reference to the wholesale price at the British gas market price known as the National Balancing Point (NBP).¹³

¹² LNG is natural gas which has been cooled to a liquid state for shipping and storage before going through a process known as regasification to convert it back into natural gas for usage.

¹³ <https://www.erce.energy/graph/uk-natural-gas-nbp-spot-price/>



14. The price of natural gas is composed of a number of different costs including the wholesale price of gas, network and supply costs. Of these, the network cost element is regulated in the State by CRU, meaning that the charges are set in the State by CRU. Suppliers must pay these charges on behalf of their customers although suppliers may choose to absorb changes to these costs without passing them on to customers.¹⁴ In addition, there are separate Public Service Obligation (PSO) levies and taxes, including the carbon tax for gas.¹⁵
15. The number and range of plans offered by gas suppliers in business segments varies widely, and unlike domestic plans, there is no requirement in the *CRU's Electricity and Gas Suppliers' Handbook* for suppliers to publish details of these plans.¹⁶ The range of plans for non-domestic customers can include fixed energy prices for multi-year contracts, fixed term discount products off standard or unit rates, business pay as you go contracts, variable rates and the option to fix all or a portion of electricity prices for a certain usage period.

Competitive Analysis

Horizontal Overlap

16. The Parties are both active in the supply of natural gas in the State. This gives rise to a horizontal overlap between the activities of the Parties in respect of the supply of natural gas in the State.
17. While Flogas and Naturgy both supply electricity in the State, neither party supplies electricity to domestic customers in the State. Flogas is solely involved in supplying electricity to small business customers whereas Naturgy is involved in the supply of electricity to medium-sized businesses and the large energy users electricity market. The State's energy and water regulator, the Commission for Regulation of Utilities' ("CRU"), in its *Energy and Water Monitoring Report for H1 2020*¹⁷ (the "CRU Report"), distinguishes between small business customers, medium-sized business customers and large business customers. On this basis, there is no horizontal overlap between the Parties in any market for the supply of electricity in the State identified in the CRU

¹⁴ CRU undertakes revenue reviews known as "Price Controls" or "Price Reviews" for EirGrid and ESB Networks in electricity, and for Gas Networks Ireland in gas. These revenue reviews consider the costs of developing, maintaining and operating the electricity and gas systems. On the basis of these five yearly revenue controls, the CRU approves the level of charges that the network operators may levy for each tariff year, which usually runs from October to October.

¹⁵ Unregulated costs such as the wholesale cost of energy and supply costs faced by suppliers are discussed in detail in a separate energy supply costs information paper (CRU17921).

¹⁶ For more information, please see: <https://www.cru.ie/wp-content/uploads/2021/06/CRU21064-Electricity-and-Gas-Suppliers-Handbook-Review-Consultation-Paper-2021-1.pdf>

¹⁷ For more information, please see: <https://www.cru.ie/wp-content/uploads/2020/12/CRU20173-Energy-and-Water-Monitoring-Report-for-H1-2020-1.pdf>



Report. This approach follows that taken by the Commission's predecessor the Competition Authority (the "Authority") in *M/12/008 – SSE/Endesa*.¹⁸

Market Definition

18. The CRU Report divides the supply of natural gas into domestic supply and business supply.¹⁹ The supply of natural gas to businesses is then sub-divided into the following segments:

- **Industrial and Commercial ("I&C"):** I&C gas customers are those with a supply point capacity ("SPC") below 3,750 kilowatt hours (kWh) but with high annual consumption;²⁰
- **Medium-Sized Non-Domestic ("MSND"):** MSND gas customers are those determined by Gas Networks Ireland²¹ to have an SPC of above 3,750 kWh but an annual consumption of less than 5.5 Gigawatt hours (GWh) (the equivalent of 5.5 million kWh);²²
- **Daily Metered ("DM"):** DM gas customers are those with an annual consumption of between 5.5 GWh and 57.5 GWh;
- **Large Daily Metered ("LDM"):** LDM customers are those with an annual consumption of over 57.5 GWh.

19. In the business supply segments listed above, both Flogas and Naturgy are active in the supply of natural gas to I&C, MSND and DM customers. Naturgy is active in the supply of natural gas to LDM customers but Flogas is not.

20. The Authority previously considered the retail supply of natural gas in *M/12/006 – Airtricity/Phoenix*.²³ In that case, the Authority considered that the retail supply of gas in the State could be divided into business and residential segments, and conducted its competitive assessment of the notified transaction by reference to the relevant sub-segments of the retail

¹⁸ *M/12/008 – SSE/Endesa*, in which the Competition Authority followed the approach of the CRU's predecessor, the Commission for Energy Regulation, in identifying four segments for the supply of electricity namely; Large Energy Users, Medium-Sized Businesses, Small Business and Domestic Customers. The text of this determination is available at: <https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/04/M-12-008-SSE-Endesa-Determination.pdf>

¹⁹ *Supra*, note 16, at page 60.

²⁰ Supply Point Capacity it is the amount of capacity that needs to be booked to meet the annual peak-day consumption by any natural gas customer during the Gas Year.

²¹ Gas Networks Ireland owns, operates, builds and maintains the natural gas network in Ireland.

²² GWh is a unit of energy representing one billion (1 000 000 000) watt hours and is equivalent to one million kilowatt hours. Gigawatt hours are often used as a measure of the output of large electricity power stations.

²³ The text of this determination is available at the following link: <https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/04/M-12-006-Airtricity-Phoenix.pdf>



business gas segment in the State in which both parties were active, namely (i) Non-Daily Metered Industrial and Commercial, (ii) Fuel Variation Tariff, and (iii) Above Regulated Tariff.²⁴

21. The European Commission has also identified separate segments in the retail supply of gas based on the consumption characteristics of consumers. For example, in *M.10173 – Luminus/Essent Belgium*²⁵ and *M.4180 Gaz de France/Suez*,²⁶ the European Commission identified separate business segments for the retail supply of gas to I&C customers, small- and medium-sized commercial customers and domestic customers.
22. The Commission has not, in the course of its assessment of the competitive impact of the Proposed Transaction, found reasons to depart from the approach previously taken by the Authority and the European Commission, and has accordingly assessed the competitive effects of the Proposed Transaction by reference to the most recently defined gas segments as published by the CRU Report.²⁷
23. Accordingly, and for the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact in respect of the supply of natural gas in the three areas of horizontal overlap between Flogas and Naturgy in the State, namely:
 - The supply of natural gas to I&C business customers;
 - The supply of natural gas to MSND business customers; and
 - The supply of natural gas to DM business customers.

Geographic market

24. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, the Commission does not need to come to a definitive view with respect to the relevant geographic market since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the relevant geographic market is defined narrowly (i.e. the State) or more broadly (i.e. the island of Ireland).

²⁴ These categories refer to the CRU categorisation from 2012. These categories were updated in 2021, as reflected in paragraph 14 of this Determination.

²⁵ https://ec.europa.eu/competition/mergers/cases1/202121/m10173_256_3.pdf

²⁶ https://ec.europa.eu/competition/mergers/cases/decisions/m4180_20061114_20600_en.pdf

²⁷ *Supra*, note 19.

25. For the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has followed the approach taken in *M/12/006*, and analysed its impact by reference to the narrowest potential geographic market, namely the State.

Competitive assessment

26. As outlined above, there is a horizontal overlap between the Parties' activities in respect of (i) the supply of natural gas to I&C business customers in the State, (ii) the supply of natural gas to MSND business customers in the State, and (iii) the supply of natural gas to DM customers in the State.

27. Tables 1-3 below outline the Parties' estimated share of supply in respect of each of the segments listed above by consumption,²⁸ as well as the estimated shares of supply of their main competitors.²⁹

The supply of gas to I&C business gas customers in the State

Table 1: Estimated share of supply in respect of the supply of natural gas to I&C business customers in the State in 2020

Name	Gas Consumed (GWhs)	Estimated Share %
Flogas	196	17.4%
Naturgy	40	3.5%
Combined	236	20.9%
Bord Gáis Energy Limited ("BGE")	450	40%
ESB Electric Ireland Limited ("ESB")	179	15.9%
Energia Customer Solutions Limited ("Energia")	133	11.8%
SSE Airtricity Limited ("SSE")	127	11.3%
Others	0.3	<1%
Total	1,125.3	100%

Source: The Parties' estimates.

28. As is evident from Table 1 above, the Parties estimate their combined share in respect of the supply of natural gas to I&C business customers in the State in 2020 in GWh to be approximately 20.9%, with an increment of approximately 3.5%.

²⁸ The parties' estimates are based on CRU's published reports. They are described as estimates as they are based on historic consumption which tends to be consistent from year to year.

²⁹ For the purpose of the CRU's reporting, the supply of gas to non-domestic customers is dependent on the Annual Quantity consumed at the site. Annual Quantity is an estimate of the amount of gas that will be consumed at a site within a given year and is usually based on historic consumption at a site.



29. Following implementation of the Proposed Transaction, the combined entity would continue to face strong competition from various players in the market for I&C business gas customers in the State, such as BGE (40%); ESB (15.9%); Energia (11.8%) and SSE (11.3%).
30. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in respect of the supply of natural gas to I&C business customers in the State.

The supply of gas to MSND business customers in the State

Table 2: Estimated share of supply in respect to the supply of natural gas to MSND customers in the State in 2020

Name	Gas Consumed (GWhs)	Estimated Share % ³⁰
Flogas	161	12.3%
Naturgy	158	12.1%
Combined	319	24.4%
BGE	403	30.8%
ESB	221	16.9%
Energia	173	13.2%
SSE	191	14.6%
Total	1,307	100%

Source: The Parties' estimates.

31. As is evident from Table 2 above, the Parties estimate their combined share in respect of the supply of natural gas to MSND business customers in the State in 2020 in GWh to be approximately 24.4%, with an increment of approximately 12.1%.
32. Following implementation of the Proposed Transaction, the combined entity would continue to face strong competition from various players in the MSND segment in the State, such as BGE (30.8%); ESB (16.9%); Energia (13.2%); and SSE (14.6%).
33. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in respect of the supply of natural gas to MSND business customers in the State.

³⁰ Rounded to 1 decimal point.



The supply of gas to DM business gas customers in the State

Table 3: Estimated share of supply in respect to the supply of natural gas to DM business customers in the State in 2020

Name	Gas Consumed (GWhs)	Estimated Share %
Flogas	10	<1%
Naturgy	263	15.2%
Combined	273	15.8%
BGE	294	17%
ESB	369	21.3%
Energia	545	31.5%
SSE	251	14.5%
Total	1,732	100%

Source: The Parties' estimates.

34. As is evident from Table 3 above, the Parties estimate their combined share in respect of the supply of natural gas to DM business customers in the State in 2020 in GWh to be approximately 15.8%, with an increment of approximately 15.2%.
35. Following implementation of the Proposed Transaction, the combined entity would continue to face strong competition from a significant number of players in the DM segment in the State, such as Energia (31.5%); ESB (21.3%); BGE (17.0%); and SSE (14.5%).
36. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in respect of the supply of natural gas to DM business customers in the State.

Conclusion on horizontal overlaps

37. Finally, switching costs are relatively low for all business gas customers. The CRU Report shows that approximately 8% of non-domestic gas customers switch gas supplier in any six-month period. In addition to switching, a significant number of non-domestic customers renegotiate gas supply contracts rather than switch suppliers.³¹ In the first half of 2020³² renegotiation rates in both electricity and natural gas were the highest rates recorded since 2016 when the CRU started

³¹ Supra, note 16 at pages 24-26.

³² Recorded data since this time period has been greatly affected by the presence of this Covid-19 Virus.



collecting data on this indicator. The CRU Report shows that 10 to 15% of non-domestic gas customers renegotiate gas supply contracts in any 6-month period.

38. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal concerns in respect of:

- The supply of natural gas to I&C business customers in the State;
- The supply of natural gas to MSND business customers in the State; and
- The supply of natural gas to DM business customers in the State.

Vertical Relationship

39. There is a potential vertical relationship between Naturgy's supply of natural gas at the wholesale level to retail gas suppliers and Flogas's supply of natural gas to end-users. Naturgy currently supplies [...] retail gas providers with natural gas.³³ In 2020, Naturgy supplied approximately [...] therms (approximately [...] kWh) of natural gas at wholesale level, representing a share of 0-5% of the supply of wholesale gas in the State.

40. The Commission considers that the potential vertical relationship between the Parties is unlikely to raise any competition concerns for the following reasons:

- I. In terms of input foreclosure, there are a number of alternative natural gas suppliers in the State including ESB, Nephin Energy Limited, Equinor Exploration (Ireland) Limited, Vermillion Energy Ireland Limited and a large number of other wholesalers (many of which are based in the UK) including Shell Energy Retail Limited, BGE, Axpo UK Limited, Electrорoute Holdings Limited, Glencore Energy UK Limited, TotalEnergies SE and Gazprom Marketing and Trading Retail Limited. Retail gas providers in the State can continue to source gas from these suppliers following implementation of the Proposed Transaction; and,
- II. In terms of customer foreclosure, this overlap is unlikely to raise concerns given that Naturgy's share of supply at the wholesale level is only 0-5%³⁴ and the merged entity's share of supply in any of the above segments is less than 25%. Following implementation of the Proposed Transaction, competitors of the merged entity at the wholesale level will continue

³³ [...].

³⁴ See paragraph 39 for more information.



to be able to supply gas to a significant number of gas providers at the retail level in the State, including BGE, ESB, Energia, and SSE.

41. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion on Competitive Assessment

42. 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

43. The Parties state in the notification that Clause 12.8 of the SPA contains certain restrictive covenants, including non-compete and non-solicitation clauses, which the Parties believe are directly related to and necessary for the implementation of the Proposed Transaction.
44. The Commission notes that the restrictions referred to by the Parties appear to be contained in Clauses 12.8.1 – 12.8.4 of the SPA. The duration of the restrictive covenants contained in Clause 12.8.1. – 12.8.4 of the SPA does not exceed the maximum duration acceptable to the Commission. The Commission considers these non-compete and non-solicitation obligations 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 Flogas Natural Gas Limited, a wholly-owned subsidiary of DCC plc, would acquire sole control of Naturgy Limited and its subsidiaries Naturgy Energy Limited and Naturgy Energy (UK) 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