

E.ON UK's acquisition of Economy Power

Report to the Office of Fair Trading

Introduction

This note is written in accordance with the Concordat between our two offices to set out Ofgem's views on this transaction so that you may take them into account in deciding whether this acquisition is likely to result in a substantial lessening of competition.

On 29 March 2005 E.ON UK announced its acquisition of Economy Power Ltd, a supplier of electricity to small and medium-sized enterprise (SME) customers.

The deal means that with Economy Power's 40,000 customer sites, E.ON UK now supplies around 700,000 SMEs and industrial and commercial customers through its Powergen and E.ON Energy brands.

Consultation

On 18 April Ofgem issued a short summary of the acquisition seeking views on the acquisition. Two responses were received. One respondent does not believe that the acquisition is likely to result in a substantial lessening of competition. However, the respondent is concerned that there may be regulatory issues arising from it, namely, that E.ON may not be taking on Economy Power's Renewables Obligation (RO), which may result in a shortfall in the RO buy-out fund. Based on information received to date from E.ON, it is Ofgem's current understanding that the acquisition includes Economy Power's supply licence. Ofgem is seeking to confirm this. If this is the case then the responsibility for Economy Power's RO would be transferred to E.ON. If this is not the case Ofgem will consider the appropriate enforcement action. The second response raises concerns that Economy Power's exit from the market will lead to greater concentration of vertically integrated wholesale and retail gas suppliers. Ofgem's view of this concern is addressed in our advice.

Ofgem's view

Relevant Market

E.ON is active in the generation, distribution, trading and supply of electricity and the shipping, trading and supply of gas. The activities of the companies overlap in the markets for the supply of electricity to I&C customers.

The arrangements for electricity procurement in the non-domestic sector differs according to the size of customer's demand, ranging from one-off, non-negotiated, standard form contracts to more complex agreements where customers have buyer power. In Ofgem's view¹ this market can be split between small, medium and large non-domestic customers.

Regional markets

¹ Review of competition in the non-domestic gas and electricity supply sectors , initial findings, July 2003

For the purposes of this merger, Ofgem agrees with E.ON's assessment that the market is national as access by suppliers is achieved through contracts with generators and the infrastructure and trading arrangements are national following the introduction British Electricity Trading and Transmission Arrangements (BETTA) in April 2005.

Market Concentration as a result of the merger

The acquisition will increase E.ON's share by a small amount in each of the small non-domestic and the medium non-domestic markets. Economy Power has [] % a small share of the small non-domestic market, less than []% of the medium non-domestic market and has some large non-domestic customers (but the market share is too small to be independently counted and is included in others). Ofgem notes that HHI for the small and medium non-domestic customers are just over the threshold for being considered highly concentrated. However, the increments are under the thresholds for concern. It is Ofgem's view that this increase has a very minimal impact on the concentration in these markets.

Effect on competition

Ofgem notes concerns were raised that Economy Power's exit from the market will have the effect of increasing vertical integration in the electricity market. Economy Power, unlike the six large suppliers in Great Britain, is not vertically integrated and does not have an inherent geographical concentration of customers. However, for it to be regarded as having an effect disproportionate to its size in the non-domestic market it would have to be able to exert pressure on the prices of its competitors. Since Economy Power's market share is small and there are doubts about Economy Power's long-term sustainability, and therefore it is unlikely that Economy Power would be able to have a positive competitive impact. In Ofgem's view the acquisition does not give rise to competition concerns.