

Notice of decision of the Gas and Electricity Market to release SSE plc from its commitments following a decision to accept binding commitments in an investigation into compliance with Chapter II of the Competition Act 1998 and/or Article 102 of the Treaty on the Functioning European Union.

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This document is a final decision, pursuant to Schedule 6A of the Competition Act 1998 (the Act), that, in accordance with section 31A (4) of the Act, we have decided to release SSE from their binding commitments following our consultation and consideration the representations.

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Executive summary

In January 2015, we opened an investigation into the conduct of companies in a corporate group headed by SSE plc ("**SSE**") under the Competition Act 1998 ("**the Act**"). The investigation looked at whether SSE had infringed Chapter II of the Act and/or Article 102 Treaty on the Functioning of the European Union ("**TFEU**")¹ by abusing a dominant position and putting its competitors at a disadvantage in the electricity connections market in the area covered by SSE's electricity distribution network in the south of England. On 3 November 2016, following a statutory consultation,² we decided to accept binding commitments from SSE ("**the Commitments**"). The Commitments³ addressed the competition concerns that we had identified during the course of the investigation ("**Ofgem's competition concerns**").⁴ The Commitments took effect from the Implementation Date, 4 May 2017 (which was 6 months after the day of our decision to accept the commitments, 3 November 2016) and were subject to review following a period of 5 years after the Implementation Date.

Our decision has been made following a consultation which ran from 11 October 2022 to 26 October 2022. During the consultation process, we received one response. We have considered the response to this consultation and, having taken it into account as part of our internal assessment, we have reasonable grounds for believing that the competition concerns referred to above no longer arise. Therefore, we have reached the view that SSE should be released from the Commitments.

Our decision to release SSE from the Commitments removes them as a binding and an enforceable requirement. This includes the requirement for SSE to regularly report to Ofgem on its compliance with the Commitments. SSE continues to be required to comply with competition law in the new connections market and with the wider regulatory framework which has developed in relation to companies' activities in this market.

¹ EU law ceased to apply on 1 January 2021 and therefore the application of the TFEU will no longer be applicable to this consultation and any future decision. The applicable legislation is the Competition Act 1998.

²https://www.ofgem.gov.uk/sites/default/files/docs/2016/06/sse_notice_of_proposal_to_accept_commitments.pdf

³ [Decision of the Gas and Electricity Markets Authority to accept binding commitments from SSE plc, following investigation into compliance with Chapter II of the Competition Act 1998 and/or Article 102 of the Treaty on the Functioning of the European Union | Ofgem](#)

⁴ See our decision accepting the Commitments, paragraph 6.22.

1. Introduction

The Parties

1.1. SSE plc (company number: SC117119) is a company incorporated in the United Kingdom whose registered address is Inveralmond House, 200 Dunkeld Road, Perth, Perthshire, PH1 3AQ.

1.2. Scottish and Southern Energy Power Distribution Ltd (company number: SC213459, "**SSEPD**") is also a company incorporated in the United Kingdom with the same registered address as SSE plc. It is wholly owned by SSE plc.

1.3. Southern Electric Power Distribution plc (company number: 04094290, "**SEPD**") is a company incorporated in the United Kingdom whose registered address is : No.1 Forbury Place, 43 Forbury Road, Reading, United Kingdom, RG1 3JH. SEPD is the holder of a licence, granted by the Authority under section 6 of the Electricity Act, which permits it to distribute electricity in the area described in that licence. That area is in central southern England and incorporates the counties of Berkshire, Buckinghamshire, Hampshire, Oxfordshire and Wiltshire.

1.4. Scottish Hydro Electric Power Distribution plc (company number: SC213460, "**SHEPD**") is a company incorporated in the United Kingdom whose registered address is also Inveralmond House, 200 Dunkeld Road, Perth, Perthshire, PH1 3AQ. It also holds a distribution licence under section 6 of the Electricity Act. It is responsible for electricity distribution in the north of Scotland.

1.5. SEPD and SHEPD are both wholly owned by SSEPD. For the purpose of this notice, the SSE group (SSE, SEPD, SHEPD, SSEPD) is referred to collectively as "**SSE**".

Background of the Investigation into SSE (2014-2016)

1.6. In December 2014, Ofgem⁵ decided that there were reasonable grounds for suspecting that SSE had infringed Chapter II of the Act and/or Article 102 of the TFEU⁶ in the market for Non-Contestable Connection Services.⁷

1.7. Ofgem opened a formal investigation on 20 January 2015 in relation to SSE's electricity distribution network and outlined the initial concerns we had in relation to SSE's conduct when providing Non-Contestable Connection Services.

1.8. Our view was that SSE was likely to hold a dominant position in the market for Non-Contestable Connection Services for connections to its own distribution network because it was the only supplier of Non-Contestable Connection Services required for new connections to its network and no other undertaking could offer those services. As such, by providing Non-Contestable Connection Services to independent distribution network operators ("**IDNOs**") and independent connection providers ("**ICPs**") on a different basis compared to equivalent services it provided to its own connections business, in the absence of an objective justification, it risked placing those IDNOs and ICPs at a competitive disadvantage.

1.9. We identified the following practices which gave rise to competition concerns regarding SSE's behaviour in providing services needed by its competitors (i.e. other IDNOs and ICPs) to connect new developments to SSE's electricity distribution network in the South of England:

- SSE applied additional and/or higher non-contestable costs in its quotes to third parties IDNOs/ICPs compared with the non-contestable costs charged to its own connections business for transactions which appear to be equivalent.

⁵ The Office of Gas and Electricity Markets ("**Ofgem**") is a non-ministerial government department and Great Britain's independent National Regulatory Authority for the energy sector. It is governed by the Gas and Electricity Markets Authority ("**GEMA**" or "**the Authority**"). In this publication the terms "Ofgem", "the Authority" and "we" are used interchangeably.

⁶ Evidence considered during the Ofgem's 2014 review of competition in the electricity connections markets raised concerns that SSE may have engaged in anti-competitive behaviour when providing Non-Contestable Connection Services in relation to SSE's distribution network.

⁷ These are services that can only be provided by an electricity distribution network operator and which are necessary for the provision of a connection to that operator's distribution network.

- SSE provided different cost quotes to IDNOs/ICPs compared to what it offered to its own business, for transactions which appear to be equivalent, based on different geographical Point of Connection (“**POC**”) locations which can have an impact on the non-contestable and contestable costs as well as on customer costs.
- SSE also applied higher Connection Voltages (“**CV**”) to comparable works in its quotes to IDNOs/ICPs compared with connection voltages applied to its own connections business for transactions which appear to be equivalent. Non-contestable costs are further defined in Appendix 1 of the document.

1.10. Our evidence suggested that this behaviour may cause undue preference to or may unduly discriminate against ICPs or IDNOs with respect to Non-Contestable Costs, POC Location and Connection Voltages.

Decision to Accept Commitments

1.11. In order to address Ofgem’s competition concerns, SSE provided commitments in September 2015 to alter its conduct in order to address these concerns. SSE committed to putting in place new processes and procedures to make sure it provides these essential services to all parties on a consistent basis. These steps include the following:

- **Commitment 1: Broad equivalence of quotations in respect of non-contestable costs, POC location and/or connection voltage.** To the maximum extent possible, SSE would ensure that quotations provided for equivalent requests for the same development were broadly equivalent in respect of costs for Non-Contestable Connection Services, POC location, and connection voltage.
- **Commitment 2: SSE’s internal structure and processes to facilitate functional separation.** SSE would implement a new operating model that would support functional separation of its connections business and introduce policies and processes to support this separation. The separation of the business was designed to ensure that the provision of Non-Contestable Connection Services was not structured in a way that caused undue preference to, or unduly discriminated against, ICPs or IDNOs.
- **Commitment 3: Systems, processes and training to facilitate the delivery of a transparent cost model, automated quotation system and compliance with competition law.** SSE would revise its policies and

procedures to ensure that they reflect the commitments, in particular in relation to the obligation not to cause undue preference or discrimination against ICPs or IDNOs in respect of costs for Non-Contestable Connection Services, POC location and/or connection voltage.

- **Commitment 4: Reporting and provision of information.** SSE would provide the Authority with monitoring reports demonstrating the steps it had taken to comply with the commitments, and its ongoing compliance with the commitments. SSE's compliance with the commitments would also be monitored by a third party, external auditor for the lifetime of the commitments. The commitments would be subject to review 5 years after the date they were implemented.

1.12. On 22 June 2016, we announced our intention to accept SSE's proposed commitments because, following our assessment, we considered that they were suitable to address Ofgem's competition concerns. We received five responses to our consultation. On 3 November 2016, we decided to formally accept SSE's proposed commitments.

1.13. Our formal acceptance of the Commitments meant that the investigation was closed. No decision had been taken on whether or not SSE had infringed competition rules. The Commitments are binding and enforceable under section 31E of the Act. The Commitments⁸ took effect on the Implementation Date, as defined in our decision to accept them (i.e., 3 May 2017). The Implementation Date was 6 months after we accepted the Commitments and they were subject to review following a period of 5 years after the Implementation Date. As this five-year period has now expired and SSE has requested to be released from the Commitments, we decided to assess whether to release SSE from the Commitments under section 31A(4)(b)(i) and (ii) of the Act.

SSE's request to be released from the Commitments

1.14. In March 2022, SSE submitted a request under section 31A(4)(b)(i) of the Act for us to consider releasing it from the Commitments at the review to be undertaken on the fifth anniversary of their implementation. SSE's submission set out why it believed that the Commitments were no longer required. Therefore, Ofgem initiated

⁸ [Decision of the Gas and Electricity Markets Authority to accept binding commitments from SSE plc, following investigation into compliance with Chapter II of the Competition Act 1998 and/or Article 102 of the Treaty on the Functioning of the European Union | Ofgem](#)

a review of the Commitments in order to decide, following consultation, whether SSE should be released from the Commitments. From the reports that SSE submitted, we were satisfied that SSE remained in compliance with its commitments during the 5-year-period.

1.15. SSE also advised in their request that since the investigation began in January 2015, the electricity distribution sector had introduced a number of significant changes to the regulatory framework that the commitments were intended to address. In particular, a new Standard Licence Condition 52, the creation of the Competition in Connections Code of Practice and the introduction of the Incentive on Connections Engagement. The principles underpinning these regulatory developments are now well embedded across the industry and facilitate effective and efficient competition within the connections market.

1.16. Following SSE's request to be released from the Commitments and our internal assessment of whether competition concerns still arise, we ran a statutory consultation from 11 October 2022 to 26 October 2022. The consultation, as required by paragraph 11 of Part II of Schedule 6A of the Act, set out our proposal to release SSE from the Commitments and sought views from SSE, other interested parties and other industry stakeholders as to whether Ofgem should release SSE from the Commitments.

1.17. We received one response to our consultation. We considered the response and having taken this response into account as part of our internal assessment, we have reasonable grounds for believing that our competition concerns no longer arise. Therefore, we reached the view that SSE should be released from the Commitments.

2. Legal Framework

2.1. The Act sets out the conditions in which commitments may be released:

2.2. Section 31A(4)(b) of the Act states that the commitments may be released where we are requested to do so by the person who gave the commitments or there are reasonable grounds for believing that the competition concerns no longer arise. Part II of Schedule 6A of the Act outlines the procedural requirements we must follow when we decide to release a party from for releasing commitments. We must:

- Issue a notice stating that we propose to release the commitments, providing the reasons for it, and the period within which representations may be made in relation to the proposed release must be published and sent to the person who gave the commitments;
- Hold a consultation, the period under which representations may be made must be for a minimum of 11 working days starting with the date the notice is given or, if that date is not a working day, with the date of the first working day after that date; and
- consider any representations made in accordance with the notice.

3. Consultation Response

3.1. On 26 October 2022, we received a single response to the consultation. This representation was provided by SSE.

3.2. SSE agreed with our intention to release them from the commitments. SSE's response proposed three reasons⁹ for releasing them from the commitments. The first reason being that they have complied with the commitments and submitted 'positive annual compliance monitoring reports'. SSE provided annual monitoring reports with an additional audit report to provide independent assurance. We were also satisfied that SSE has remained in compliance with its commitments during the 5-year-period.

3.3. SSE's second reason for release is that the regulatory framework has developed since the implementation of the commitments in such a way that more effective competition is facilitated. Notably, SSE, like all DNOs, is now under the obligations of SLC 52 and must comply with the Competition in Connections Code of Practice ("**CiCCoP**") with the aim to facilitate competition in the local connections market. This includes providing input services on an equivalent basis to all connection parties that operate in the local connections markets, and not distorting, preventing or restricting competition in these markets in favour of its own downstream business.

3.4. In addition to SLC 52 and the CiCCoP, the Incentive on Connections Engagement ("**ICE**") was introduced from the start of RIIO-ED1 distribution network price controls in 2015. ICE provides an incentive for all DNOs, including SSE, to provide a good service to all large customers that are seeking a connection. The associated reporting requirements ensure transparency in this area. Ofgem can issue a financial penalty if we conclude that the DNOs have failed to engage sufficiently with their large connection customers.

3.5. SSE concluded that there are no further competition concerns remaining. They referenced the regulatory changes detailed in section 3.3 and 3.4 and their view that these changes have addressed all previous competition concerns.

3.6. Lastly, SSE have also stated that there 'is no reasonable or justifiable basis for them (commitments) to be imposed for a further period.'¹⁰

⁹ SSE's letter of 26 October 2022 responding to the consultation.

¹⁰ *ibid*

4. Our final decision

4.1. Following SSE's request for us to consider releasing it from the Commitments under section 31A(4)(b)(i) of the Act, we considered whether the competition concerns we originally identified in our investigation still arise, and if the Commitments remain needed as the most appropriate and proportionate means of addressing any relevant competition concerns (section 31A(4)(b)(ii)). In light of our assessment, the response to our consultation, and having reflected on the full range of available options, including maintaining the Commitments, we consider that it is now appropriate to release SSE from the Commitments. We have reasonable grounds for believing that the competition concerns that led to the Commitments no longer arise. Our decision is primarily based on the changes that have occurred to the regulatory landscape in this area, the evidence of how the market is operating and SSE's reasons with regards to how the Commitments have permanently changed its processes.

4.2. SSE is under the obligations of SLC 52 and it must comply with the CiCCoP and facilitate competition in the local connections market, as are all other DNOs. This includes providing input services on an equivalent basis to all connection parties that operate in the local connections markets. We consider that in this way SSE will not be able to use its market position in a way of distorting, preventing or restricting competition in these markets in favour of its own downstream business. We are satisfied that SSE has adjusted its practices to ensure competition is not distorted by its behaviour in the same way that led to the previously concerns. Ofgem has powers to monitor licensees' compliance with the CiCCoP, in the same way in which it can monitor compliance with other licence conditions and if needed Ofgem may take enforcement action or renewed competition enforcement action, if this is deemed to be more appropriate.

4.3. ICE also provides an incentive for all DNOs, including SSE, to provide a good service to all large customers that are seeking a connection. The associated reporting requirements ensure transparency in this area. If we conclude that the DNOs have failed to engage sufficiently with their large connection customers, we can issue a financial penalty. While our RIIO-ED2 Draft Determinations propose to remove ICE from 2023, we are proposing to introduce a new Major Connections incentive that will continue to ensure a high level of customer satisfaction in this area as ICE has previously done.

4.4. Our decision to release SSE from the Commitments removes them as a binding and an enforceable requirement. This includes the requirement for SSE to regularly report to Ofgem on its compliance with the Commitments. SSE will continue to be required to comply with competition law in the new connections market and with the wider regulatory framework which has developed in relation to companies' activities in this market.