

June 2002

**London Electricity Group plc's
proposed acquisition of CSW
Investments (the holding company
of SEEBOARD Group plc)**

A consultation paper

Contents

1.	Introduction	3
2.	Details of the proposed acquisition	4
3.	Merger control process	5
4.	Details of the parties	7
5.	Issues arising from the proposed transaction	14
6.	Conclusion	22

1. Introduction

Purpose of this document

1.1 This document:

- ◆ gives details of London Electricity Group plc's proposed acquisition of CSW Investments (the holding company of SEEBOARD Group plc);
- ◆ explains the merger control process for the proposed transaction; and
- ◆ requests comments on any regulatory and competition issues, relating to electricity and gas, arising from the proposed transaction.

1.2 Ofgem will make recommendations to the Director General of Fair Trading (DGFT) in relation to any competition issues arising as a result of the proposed transaction. The DGFT may then make recommendations to the European Commission. In order to allow comments to be considered Ofgem must receive these **no later than 5pm on Tuesday 2 July 2002**.

2. Details of the proposed acquisition

- 2.1 London Electricity Group plc (LEG) proposes to acquire CSW Investments (CSW), the holding company of SEEBOARD Group plc (SEEBOARD), from American Electric Power Company Inc (AEP)¹. The transaction values SEEBOARD at approximately £1.39 billion (including outstanding indebtedness).
- 2.2 LEG (whose ultimate parent company is Electricite de France (EdF), the state owned electricity generation, transmission, distribution and supply business in France) is involved in the generation, distribution and supply of electricity in Great Britain (GB) and the shipping and supply of gas in GB. In addition, LEG owns 24Seven Utility Services Limited (24Seven) which provides utility network asset management services to distribution businesses, principally those presently owned and operated by subsidiaries of LEG.
- 2.3 SEEBOARD is involved in the generation, distribution and supply of electricity in GB and the shipping and supply of gas in GB. In addition, SEEBOARD is also involved in managing power supplies for the London Underground.
- 2.4 On 18 June 2002, LEG announced that it had signed an agreement with AEP for the purchase of SEEBOARD. The proposed transaction was notified to the European Commission on 24 June 2002 for a decision to clear the transaction within one month or to initiate a Phase II investigation under the European Community Merger Regulation (ECMR).

¹ LEG's purchase of SEEBOARD will take place through the purchase of CSW. For simplicity, this consultation paper refers to LEG's proposed acquisition of SEEBOARD rather than CSW.

3. Merger control process

- 3.1 Under the ECMR (Council Regulation 4064/89 as amended by Council Regulation 1310/97), a merger having a 'community dimension' should be appraised by the European Commission with a view to establishing whether or not it is compatible with the common market. LEG's proposed acquisition of SEEBOARD appears to meet the relevant criteria for a merger having a 'community dimension' as the turnover of both CSW and EdF satisfies the turnover requirements set out in Article 1.2 of the ECMR. Under the ECMR the European Commission has one month from the date of receipt of a complete notification to decide whether the proposed transaction raises serious doubts as to the acquisition's compatibility with the common market (a Phase I investigation). If the European Commission concludes that there are serious doubts it can initiate an in-depth investigation of the proposed transaction under the ECMR (a Phase II investigation).
- 3.2 Article 9 of the ECMR provides for the Commission to refer a merger to the competent authorities of a Member State where on application of that Member State:
- ◆ a concentration threatens to create or to strengthen a dominant position as a result of which effective competition would be significantly impeded in a market within that Member State, which presents all the characteristics of a distinct market; or
 - ◆ a concentration affects competition in a market within that Member State which presents all the characteristics of a distinct market and which does not constitute a substantial part of the common market.
- 3.3 If a merger is referred back to the Member State under Article 9, the Member State may only take measures strictly necessary to safeguard or restore effective competition in the market concerned. Unless the European Commission decides to refer the merger to the United Kingdom (UK), the UK will be precluded from applying its national legislation on competition to the merger. The European Commission then has exclusive jurisdiction to determine whether the proposed acquisition, with or without conditions, does or does not create or strengthen a dominant position as a result of which effective competition would

be significantly impeded in the common market or a substantial part of it and accordingly whether it is, or is not, compatible with the common market.

- 3.4 Article 21 of the ECMR provides for a Member State to take appropriate measures to protect legitimate interests other than those taken into consideration by the ECMR.
- 3.5 The European Commission, in considering the proposed transaction will consult with the national competition authorities. The relevant authorities for the UK are the Secretary of State for Trade and Industry and the DGFT. The DGFT will inform the European Commission of any competition concerns that the proposed acquisition may raise for the UK and in preparing his advice in relation to proposed acquisitions within the gas and electricity sectors will consult with Ofgem.

4. Details of the parties

SEEBOARD

- 4.1 SEEBOARD's ultimate parent company is AEP, a major energy services company serving 4.8 million customers in the United States and 4 million customers elsewhere, notably Australia, Brazil, China, Mexico, and the UK. If the proposed transaction is allowed to proceed AEP will continue to hold two coal fired electricity generation plants at Fiddlers Ferry and Ferrybridge² and a 50% shareholding in South Coast Power Limited (a joint venture with Scottish Power plc).
- 4.2 SEEBOARD has the following gas and electricity interests in GB:
- ◆ **electricity generation** - a 37.5% shareholding in Medway Power Limited, which owns and operates a 688 MW combined cycle gas turbine (CCGT) plant on the Isle of Grain in Kent. In 2001/02 SEEBOARD's share of Medway Power Limited's total capacity accounted for 0.4% of total England and Wales capacity (0.3% of total GB capacity) and 0.5% of total England and Wales output for the period (0.4% of total GB output);
 - ◆ **electricity trading** - SEEBOARD is involved in the sale and purchase of electricity in the wholesale prompt and forward markets. SEEBOARD is not a significant player in this sector;
 - ◆ **electricity distribution** - through its distribution subsidiary, SEEBOARD Power Networks Limited (SPN), SEEBOARD owns, operates and maintains an electricity distribution system in Kent, Sussex and Surrey, to which approximately 2.15 million customers are connected. Through SPN, it also holds an 80% share of SEEBOARD Powerlink, the consortium company that manages power supplies for the London Underground. SEEBOARD Powerlink holds an electricity generation licence and an electricity supply licence. On 17 May 2002, the European Commission published a notice seeking views on a proposed

² AEP's acquisition of these plants was cleared by the Secretary of State on 23 November 2001.

acquisition, by SEEBOARD and three other parties, of Infraco SSL and Infraco BCV who hold contracts for the maintenance, refurbishment and renewal of London Underground infrastructure. The acquisition was cleared by the European Commission on 21 June 2002;

- ◆ **electricity supply** - through SEEBOARD Energy Limited, SEEBOARD supplies electricity to domestic and non-domestic customers in GB. The great majority of its customers are in SEEBOARD's former Public Electricity Supply (PES) authorised area in the south east of England. SEEBOARD supplies electricity to approximately 1.37 million domestic electricity customers and 180,000 non domestic customers (by number of meter points). As at March 2002 SEEBOARD's supply business accounted for approximately 5.3% of the supply of electricity to domestic customers in GB (by number of meter points) and 6.9% of the supply of electricity to non-domestic customers in GB (by number of meter points);
- ◆ **gas supply** – through SEEBOARD Energy Gas Limited and Southern Gas Limited, SEEBOARD supplies gas to domestic and non-domestic customers in GB. SEEBOARD supplies gas to approximately 370,000 domestic gas customers and 3,700 non-domestic gas customers (by number of meter points). As at March 2002, SEEBOARD accounted for 1.8% of gas supplied to domestic customers in GB (by number of meter points) and 0.9% of gas supplied to non-domestic customers in GB (by number of meter points);
- ◆ **gas shipping** - SEEBOARD, through its wholly owned subsidiary SEEBOARD Energy Gas Limited, holds a gas shipper licence. SEEBOARD is not a significant player in this sector;
- ◆ **gas trading** - sale and purchase of gas in the wholesale prompt and forward markets. SEEBOARD is not a significant player in this sector;
- ◆ **metering** - SEEBOARD sold its metering and meter reading services businesses to IMServe in 2000, who currently provide metering and meter reading services to SEEBOARD. Ownership of the actual meters remains with SEEBOARD;

- ◆ **connections** – SEEBOARD provides electricity connections services to its own distribution system. It also undertakes some connections work for water and gas connections and accounts for a small number of electricity connections outside of the SEEBOARD area. In 2001, SEEBOARD accounted for 100% of low voltage (LV), domestic and high voltage (HV) connections in the SEEBOARD area. This represents approximately 6% of all LV and domestic connections in GB and approximately 18% of HV connections in GB during the period. In terms of revenue generated from connections work, based upon price control receipts for the five year period to 2001 SEEBOARD accounted for an average of 8% of total connections revenue for all of the electricity distribution businesses; and
- ◆ **other activities** – it owns SEEBOARD Contracting Services Limited, an electrical contracting business which provides electrical and mechanical installation and maintenance services for domestic and non-domestic customers throughout the UK.

LEG

- 4.3 LEG is wholly owned by London Electricity Holding Group, a subsidiary of EdF UK Limited³. EdF UK Limited is wholly owned by EdF International, which itself is a wholly owned subsidiary of EdF. EdF is wholly owned by the French state.
- 4.4 The principal business of EdF is the generation, transmission, distribution and supply of electricity in France. EdF accounts for over 90% of total electricity generation output in France and exports electricity from France to neighbouring countries, including to England and Wales through the 2000 MW France-England interconnector. EdF and The National Grid Company each hold a 50% share of the physical assets of the interconnector. EdF is responsible for carrying out auctions for the interconnector capacity. EdF generates, transmits, distributes and supplies electricity elsewhere in the world. EdF also designs, builds and acts as a technical consultant in relation to the construction, operation and maintenance of electrical plants and power networks and, through specialised subsidiaries, provides waste recycling and street lighting services. In addition, EdF is active in electricity trading outside of France through EdF

Trading Limited (a joint venture with Louis Dreyfus which is based in the UK). EdF Trading Limited holds licences for gas supply, gas shipping and electricity supply in GB.

4.5 LEG's principal gas and electricity business interests in GB include:

- ◆ **electricity generation** – through its subsidiary London Power Company plc, LEG owns and operates generation plants at: Sutton Bridge (a 803MW CCGT plant); Cottam (a 2008MW coal fired plant); and West Burton (a 2012MW coal fired plant). In addition, LEG has a 13.475% share in Barking Power Limited which owns and operates a 1000MW CCGT plant. In 2001/02 LEG accounted for 7.3% of total capacity in England and Wales⁴ and 6.4% of capacity in GB⁵. In 2001/02 LEG's total output of 23.7TWh accounted for 7.7% of total England and Wales output within the period (7% of total GB output);
- ◆ **electricity distribution** - through its wholly owned subsidiaries London Power Networks plc (LPN) and EPN Distribution Limited (LPN), LEG owns, operates and maintains the principal electricity distribution systems in the London metropolitan area, East Anglia and parts of the home counties to which approximately 5.7 million customers are connected. LEG also operates a number of private distribution networks. In addition, LEG owns 24Seven, which provides utility network asset management services to LPN and EPN⁶;
- ◆ **electricity trading** – sale and purchase of electricity in the wholesale prompt and forward markets. LEG is not a significant player in this sector;

³ EdF acquired control of EdF UK Limited (and thus LEG) following a decision of the European Commission in 1999 to grant merger clearance.

⁴ Generation capacity and output figures for LEG in this document exclude the French interconnector. However, in assessing whether that transaction is likely to raise any competition concerns, Ofgem intends to take into account capacity that may be available to EdF through the French interconnector.

⁵ All LEG output and capacity figures included in this consultation document take account of LEG's 13% shareholding in Barking Power Limited and of LEG's purchase of West Burton power station from TXU in 2001.

⁶ 24Seven controls the assets previously employed by LPN and EPN in maintaining, managing and operating their distribution networks, including equipment, IT systems, staff and leases of property and vehicles. 24Seven provides the security and safety of supply enquiry service and new connections for LPN and EPN.

- ◆ **electricity supply** – through its wholly owned subsidiaries, including London Electricity plc, LEG supplies electricity to domestic and non-domestic customers in GB. LEG’s electricity supply business operates principally in England and Wales and includes the ex-PES supply businesses of the London and SWEB areas. The majority of LEG’s electricity supply customers are in those areas. LEG also has a 75% interest in Virgin Energy Limited (Virgin Energy), the other 25% of which is owned by the Virgin Group. LEG supplies electricity to approximately 2.6 million domestic electricity customers and 380,000 non-domestic customers (by number of meter points)⁷. As at March 2002, LEG accounted for 10.1% of electricity supplied to domestic customers in GB (by number of meter points) and 14.8% of electricity supplied to non-domestic customers in GB (by number of meter points);
- ◆ **gas supply** – through its wholly owned subsidiaries, including London Electricity plc, LEG supplies gas to domestic and non-domestic customers in GB. LEG supplies gas to 520,000 domestic gas customers and 4,000 non-domestic gas customers. As at March 2002, LEG accounted for 2.6% of gas supplied to domestic customers in GB (by number of meter points) and 1% of gas supplied to non-domestic customers in GB (by number of meter points);
- ◆ **gas shipping** – through its wholly owned subsidiary, London Electricity Group plc, LEG holds a gas shipper licence. LEG is not a significant player in the sector. EDF Trading Limited (a subsidiary of EdF) also holds a gas shipper licence;
- ◆ **gas trading** - sale and purchase of gas in the wholesale prompt and forward markets. LEG is not a significant player in this sector;
- ◆ **metering** – LEG, through ECS Metering Services Limited (ECS), carries out the majority of metering services (meter provision and operation) and meter reading services in the London area. ECS also provides the majority of meter reading services in the SWEB area. In relation to EPN, metering services are carried out under contract, by Siemens (Eastern

⁷ These figures include Virgin Energy’s activity within the sector.

Electricity plc having sold its metering and metering services business before LEG acquired EPN in 2001). The ownership of the actual meters remains with LPN and EPN respectively; and

- ◆ **connections** – 24Seven undertakes all connections work on behalf of LPN and EPN. 24Seven does not actively seek connections work outside of the London and Eastern areas. In 2001, 99% of LV and domestic connections and 100% of HV connections in the London area were undertaken by LPN. This represents approximately 10% of all LV and domestic connections in GB and 14% of HV connections in GB during the period. Over the same period 100% of LV, domestic and HV connections in the Eastern area were undertaken by EPN, which represents 11% of total LV and domestic connections in GB and 11% of total HV connections in GB during the period. In terms of revenue generated from connections work, based upon price control receipts for the five year period to 2001 LPN and EPN accounted for an average of 21% of total connections revenue for all of the electricity distribution businesses.

- 4.6 As a result of the proposed transaction LEG will (based on figures for 2001/02) account for 7.7% of total generation capacity in England and Wales (6.7% of total capacity in GB) and for 8.2% of total output in England and Wales (7.4% of total GB output (in 2001/02).
- 4.7 In relation to electricity supply LEG will, as a result of the proposed transaction supply electricity to approximately 3.9 million domestic customers in GB (15.3% of supply to domestic customers in GB) and 560,000 non-domestic customers in GB (21.6% of supply to non domestic customers in GB) (by number of meter points). The majority of these customers would be in the former PES areas of London, SWEB and SEEBOARD.
- 4.8 If the proposed acquisition is allowed to proceed, LEG will supply gas to approximately 890,000 domestic customers in GB (4.4% of supply to domestic customers in GB) and 7,800 non-domestic customers in GB (2% of supply to non domestic customers in GB) (by number of meter points).

- 4.9 If the proposed transaction is cleared LEG will, based on 2001 figures account for over 25% of total LV and domestic connections and over 35% of total HV connections to the electricity distribution networks in GB. In terms of average revenue from connections over the five years to 2001 LEG will account for 29% of total connections revenue of all the electricity distribution businesses.
- 4.10 LEG, through its wholly owned subsidiary ECS carries out the majority of metering services (meter provision and operation) in the London area and the majority of meter reading services in the London and SWEB areas. Metering services in relation to the Eastern area are currently carried out, under contract, by Siemens. Similarly, SEEBOARD's metering and meter reading services are carried out, under contract, by IMServe. SEEBOARD's contract with IMServe will continue in place until at least 2005. LEG owns the actual meters of LPN and EPN and will acquire ownership of SPN's meters as a result of the proposed transaction.

5. Issues arising from the proposed transaction

- 5.1 In examining proposed mergers, acquisitions or other comparable transactions it is important to consider what effect the proposed transaction may have on the level of competition present within any relevant part of the GB gas and electricity sectors.
- 5.2 In particular, a merger or acquisition might raise concerns when the purchaser and the companies that it is acquiring have overlapping activities within GB as the overall level of competition within a particular sector may be reduced if two companies combine.
- 5.3 In relation to LEG's proposed acquisition of SEEBOARD, Ofgem considers that it is necessary to consider the effects of the proposed acquisition in relation to:
- ◆ competition in electricity and gas supply;
 - ◆ competition in electricity generation;
 - ◆ competition in electricity connections and metering; and
 - ◆ electricity distribution.

Competition in electricity and gas supply

Electricity supply

Domestic customers

- 5.4 If the proposed transaction is cleared LEG's share of the GB domestic electricity supply sector would increase to 15.3% (an increase of 5.2%), with LEG supplying electricity to 3.9 million domestic electricity customers. The majority of these customers would be in the former PES areas of London, SWEB and SEEBOARD. As a result of the proposed transaction LEG would be one of the largest domestic electricity suppliers in GB, with a position comparable with other suppliers within the sector, such as TXU Energi, Innogy and Centrica. Following the clearance of the transaction there would be 9 electricity suppliers active in the domestic supply market.

- 5.5 In November 2001, Ofgem published the results of its 2001 review of competition in the domestic electricity and gas supply sectors⁸. Overall the findings of the review indicated that competition is now well established, effectively promoting customers' interests, and is continuing to develop well. In April 2002, following consultation in February 2002⁹, Ofgem removed price controls from the former PES suppliers, taking the view that the best way of protecting customers' interests in the future was by the vigorous use of its competition and consumer law powers rather than specific supply price controls.
- 5.6 Paragraph 5.4 above and Chapter 4 set out LEG's share of the domestic electricity supply sector (and the increase in its position as a result of the proposed transaction) on a GB basis. The electricity supply sector is generally considered on a GB-wide basis, with most suppliers active on a GB basis (including LEG and SEEBOARD).
- 5.7 However, it is Ofgem's view that some regional characteristics remain within the domestic electricity supply sector, as a result of its historical organisation into 14 regional price controlled areas. Ofgem considers that in reviewing acquisitions involving the former PES supply businesses it may be helpful to examine what effect, if any, the proposed transaction might have on competition within those former PES areas i.e. the possible regional characteristics of the market.
- 5.8 In relation to LEG's proposed acquisition of SEEBOARD the relevant former PES supply areas are: London, SEEBOARD and SWEB. Ofgem considers that in reviewing what effect, if any, the proposed acquisition may have on competition within each of these regional areas it is necessary to consider the extent of competition within those areas and the impact that the proposed transaction might have on that competition.
- 5.9 At March 2002, SEEBOARD supplied 66.2% of domestic electricity supply customers within the SEEBOARD area. LEG (including Virgin Energy) supplied 1.7% of domestic customers within the area. The largest alternative supplier in the SEEBOARD area supplied 18.8% of domestic customers as at March 2002. As a result of the acquisition there will only be a marginal increase on

⁸ 'Review of domestic gas and electricity competition and supply price regulation: evidence and initial proposals' Ofgem November 2001.

SEEBOARD's previous position to 67.9% which compares with the average of 65.8% across all 14 areas.

- 5.10 LEG, in March 2002, supplied 68.7% of domestic electricity supply customers within the London area, whilst SEEBOARD supplied 0.9% of domestic electricity customers in the area. In the London area the largest competitor supplied 20% of domestic electricity customers. In relation to the SWEB area, as at March 2002, LEG supplied electricity to 70.9% of domestic customers, with SEEBOARD supplying to less than 1% of domestic customers in the SWEB area. The largest alternative supplier in the SWEB area supplied 17.3% of domestic electricity customers as at March 2002.
- 5.11 In addition to considering a supplier's position within the sector, the number of customers who have switched supplier can also be used as an indicator of effective competition. Across the 14 areas, 38% of domestic electricity customers have switched supplier at least once since the introduction of competition. This level is considerably higher than in other comparable sectors, such as banking¹⁰. With regard to the proposed transaction, 33% of customers in the SWEB area have switched supplier since the introduction of competition, while 37% of customers in the London area and 39% of customers in the SEEBOARD area have switched. None of the three areas is significantly different to the GB average.
- 5.12 The degree of competition can also be indicated by the number of customers that have switched supplier on more than one occasion. Multiple switchers are those that have switched from the former PES supplier and have subsequently switched again, this may have been a switch back to the former PES supplier or to another supplier. In the London area 14% of customers have switched supplier more than once. In the SEEBOARD area 13% of domestic electricity customers are multiple switchers while in the SWEB area the figure is 9%. Switching activity within the London and SEEBOARD areas compare with the GB average of 13% for multiple switching while the SWEB figures are slightly below the GB average.

⁹ 'Review of domestic gas and electricity competition and supply price regulation: conclusions and final proposals' Ofgem February 2002.

¹⁰ 'Competition in gas and electricity supply – separating fact from fiction': Ofgem Factsheet January 2002.

- 5.13 Both LEG and SEEBOARD have been actively competing in price terms in each other's former area. In particular, LEG, through Virgin Energy, offers customers in SEEBOARD's area a 21% discount based on SEEBOARD's prices¹¹. This offer is the best available to customers in the SEEBOARD area. Virgin Energy also provides the largest discount for domestic customers in the London and SWEB areas. Similarly, SEEBOARD offers customers a 7% discount on LEG's prices in the London area and 9% in the SWEB area. Generally there are a range of at least 12 offers open to customers in each of the three areas with virtually all suppliers offering at least a 5% decrease in prices as a result of switching. Competition in terms of price is likely to continue in the three areas if the proposed transaction is allowed to proceed.
- 5.14 Ofgem would welcome views as to whether the proposed acquisition raises any significant competition concerns, either in relation to one or more of the relevant former PES supply areas, or in relation to GB as a whole. It is Ofgem's initial view that the proposed transaction does not raise any significant competition concerns in relation to the domestic electricity sector, given the relatively small increase in position as a result of the proposed transaction and given the levels of competition present within the sector.

Non-domestic customers

- 5.15 If the proposed transaction is allowed to proceed, LEG's share in the GB non-domestic electricity supply sector would increase to 21.6% (an increase of 6.9%), with LEG supplying electricity to 560,000 non-domestic electricity customers.
- 5.16 Although there are several large suppliers in the non-domestic sector, Ofgem considers that competition in non-domestic electricity supply is generally well developed and that it is continuing to develop¹². There are several suppliers that specialise in supplying electricity to non-domestic customers and if the merger is cleared there would continue to be 20 suppliers active in the non-domestic electricity supply sector. Taking into account the level of competition within the

¹¹ All price comparisons in this section are based upon a standard credit tariff for medium consumption levels.

¹² 'A review of the development of competition in the Industrial and Commercial electricity supply market' Ofgem December 2000.

sector it is Ofgem's initial view that the proposed transaction does not raise any significant competition concerns in relation to non-domestic electricity supply.

Gas supply

5.17 The industry structure at the time of privatisation was different in gas supply compared to electricity (with one national incumbent supplier rather than 14 regional incumbents) and has always operated on a national basis. As such Ofgem considers that it is sufficient, for the purposes of considering the effect of the proposed transaction, to focus on the gas supply sector on a GB basis.

Domestic supply

5.18 If the proposed acquisition is allowed to proceed, LEG will supply gas to 890,000 domestic customers in GB, increasing its share of the domestic gas supply sector to 4.4% (an increase of 1.8%).

5.19 As stated above in paragraph 5.5, Ofgem considers that competition in domestic gas supply has developed well and is continuing to develop, with 10 suppliers remaining active in domestic gas supply if the merger is cleared. In view of this and given the relatively small scale increase in LEG's position in the sector as a result of the transaction it is Ofgem's initial view that it does not raise any competition concerns for Ofgem in relation to the domestic gas supply sector.

Non-domestic supply

5.20 If the proposed acquisition is allowed to proceed, LEG will supply gas to 7,800 non-domestic customers in GB, increasing its share of the domestic gas supply sector to 2% (an increase of 1%).

5.21 Ofgem considers that competition in gas supply to the non-domestic sector is also generally well developed and that it is continuing to develop¹³ with at least 13 active suppliers within the sector following the proposed transaction. In view of LEG's relatively small share of the non-domestic gas supply sector and the number of competitors within the sector who have a greater or comparable position within the sector it is Ofgem's initial view that the proposed transaction does not raise any significant competition concerns for non-domestic gas supply.

¹³ 'A review of the development of competition in the Industrial and Commercial gas supply market' Ofgem August 2000.

Competition in electricity generation

- 5.22 If the proposed transaction is allowed to proceed LEG will increase its total capacity from 4958MW to 5216MW, and will, based on 2001 figures, account for 7.7% of total England and Wales capacity (an increase of 0.4%) and 8.2% of total England and Wales output (an increase of 0.5%). In terms of total GB capacity in 2001/02 LEG will account for 6.7% (an increase of 0.3%) and in terms of total GB output, 7.4% (an increase of 0.4%).
- 5.23 In addition to LEG's share of the electricity generation sector EdF imports electricity into GB through the France-England interconnector. In 2001/02 EdF supplied just under 10TWh of electricity to GB through the interconnector which represents 3.2% of total output in England and Wales during the period.
- 5.24 Competition within generation sector has developed well with 35 companies currently active within the electricity generation sector. LEG's proposed acquisition of SEEBOARD's share of Medway Power will not alter LEG's position within the generation sector to any notable effect.
- 5.25 LEG is a vertically integrated business which is active in both electricity generation and electricity supply. Details of its activities in both these sectors are described in Chapters 4 and 5.
- 5.26 Ofgem would welcome views on any competition issues arising from the proposed transaction in relation to electricity generation. In addition Ofgem would welcome views on any issues arising in relation to the increased vertical integration of LEG.

Electricity connections and metering

- 5.27 The Electricity Act 1989 places a duty on an electricity distributor to provide a connection to its electricity distribution system if a customer so requests. The Gas and Electricity Markets Authority, under section 23 of the Electricity Act has the power to determine disputes over connection charges. Both LPN and EPN have contracted out all of their connections work to 24Seven. SEEBOARD has its own connections business which provides connections to its distribution system and does undertake some (albeit a small amount) of connections work outside of

the south east. SEEBOARD also carries out some water and gas connections work.

- 5.28 There are a number of electricity connections providers active within GB (including most of the GB electricity distribution businesses). Some connections providers only operate within a certain geographical area and many of the third party connections providers undertake sub-contracting work for the electricity distribution businesses as well as providing connections at the request of customers. Details of both LEG and SEEBOARD's connections activities are set out in Chapter 4.
- 5.29 Ofgem would welcome views on whether the proposed transaction raises any competition concerns in relation to electricity connections. In addition Ofgem would welcome views on whether the proposed transaction raises any competition concerns in relation to the provision of metering or meter reading services¹⁴.

Electricity distribution

- 5.30 In November 2001, Ofgem consulted on the issues raised by further consolidation in the GB electricity distribution sector¹⁵. In that paper Ofgem took the view that further consolidation in the electricity distribution sector was unlikely to raise concerns in relation to general competition policy, given that the electricity distribution businesses are price controlled regional monopolies, but that further consolidation would raise ongoing regulatory issues for Ofgem which would need to be addressed. In particular, the reduction in the number of independent groups operating or owning distribution businesses limits the role which comparisons between companies can play at or between price controls.
- 5.31 In May 2002, Ofgem issued a policy statement setting out its future regulatory policy in relation to mergers within the electricity distribution sector¹⁶. In that statement Ofgem advised that it would bring forward proposals under section 11

¹⁴ Further details of the parties metering and meter reading services activities are set out in Chapter 4.

¹⁵ 'Mergers in the electricity distribution sector: a consultation document' Ofgem November 2001.

¹⁶ 'Mergers in the electricity distribution sector: a policy statement' Ofgem May 2002.

of the Electricity Act 1989 to modify the special conditions of those distribution licensees involved in the transaction in order to provide a compensation payment for customers of £32 million, to be recovered over a five year period.

- 5.32 If LEG's proposed acquisition of SEEBOARD is allowed to proceed Ofgem will, in accordance with its policy statement, bring forward licence modifications to reduce the regulated revenue of the three distribution businesses (SPN, LPN and EPN) by £32 million in total over five years. This will be taken forward as part of Ofgem's ongoing regulation of the sector.

Conclusion

- 6.1 Ofgem is seeking the views of interested parties on LEG's proposed acquisition of SEEBOARD, so that it may inform any recommendations made by the DGFT to the European Commission.
- 6.2 Responses will normally be made available in the Ofgem library and on the Ofgem website unless respondents request that they should remain confidential. Respondents should mark any part of their response (or the whole response) which is to remain confidential, if this is the case, and where possible should consign any confidential material to appendices.
- 6.3 Comments on the acquisition should be sent, **by 5pm on 2 July 2002**, to:

Ben Woodside
Strategy and Corporate Transactions Manager
Ofgem
9 Millbank
London
SW1P 3GE

Tel: 020-7901-7047
Fax: 020-7901-7077
E-mail: ben.woodside@ofgem.gov.uk