



*Promoting choice and  
value for all customers*

Direct Dial: 020 7901 7240  
Email: [andrew.wright@ofgem.gov.uk](mailto:andrew.wright@ofgem.gov.uk)

Date: 19 January 2009

Dear Sir,

### **Competition Act Investigation into Scottish Power and Scottish & Southern Energy**

On 8 April 2008, the Authority launched an investigation under the Competition Act 1998 ("CA98") into the behaviour of Scottish Power ("SP") and Scottish & Southern Energy ("SSE") in the wholesale electricity market. The suspected grounds of the investigation were that (amongst other periods) during a four week period from mid-September to mid-October 2007, SP and SSE had a position of dominance arising from transmission constraints between England and Scotland, and that they abused this position by withholding generation plant from the wholesale forward market while using the same plant to supply balancing power to National Grid ("NG") at excessive prices. Ofgem has looked into a number of instances of similar behaviour by SP and/or SSE since the British Electricity Transmission & Trading Arrangements ("BETTA") were introduced, and these other periods were also included in the scope of the CA98 investigation.

Over the course of the investigation, with which both SP and SSE cooperated fully, Ofgem examined the conduct of the two companies during the periods in question. We assessed whether the firms could be considered to be dominant in the relevant market, and whether there was any evidence that a dominant position had been abused under CA98. Ofgem also estimated the financial impact on the market and consumers from SP's and SSE's behaviour. Empirical analysis of these issues was carried out using information obtained from the companies under Section 26 of the Competition Act 1998, together with publicly available sources.

We have concerns with the behaviour observed during the periods under investigation. In particular it appears that both SP's and SSE's output has been much more expensive than that of comparable generators in England and Wales at times of constraint. The resultant costs appear to have been borne by competitors and ultimately by consumers. There is also evidence that in at least some cases, SP and/or SSE may have behaved in ways that exacerbated, and in some cases created, constraint situations in relation to Scotland.

However, Ofgem considers that the likelihood of making an infringement finding under CA98 is low (although not negligible).

In determining whether to continue with the case, Ofgem has applied its criteria for investigation as set out in its Enforcement Guidelines<sup>1</sup> and considered all relevant issues. In particular, we have considered the resources required to investigate the matter further; the prospects of a finding of abuse of dominance on the basis of work to date; and the availability of other actions to address the issues at hand.

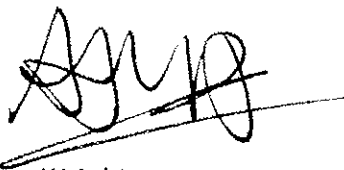
Ofgem considers that carrying out further analysis pursuant to the CA98 investigation would not be an efficient use of resources particularly given that there are other actions available which could be more effective in addressing the issues identified by the investigation on a forward-looking basis. Some of these actions are already in train, such as the Transmission Access Review (TAR), which is considering options for more efficient allocation of transmission capacity rights in Scotland, and the possible development of a tailored market abuse framework within European legislation.

As the processes above may not prove effective in addressing all of the concerns identified, Ofgem intends to consult on additional powers and/or specific policy proposals to address the issues highlighted by the investigation, amongst other concerns. We intend to write to the industry on these matters by the end of March 2009.

Ofgem has therefore decided to close the CA98 investigation into SP and SSE.

The decision to close the investigation at this stage does not preclude Ofgem from re-opening the investigation at some future point in time should circumstances warrant such action. In the meantime, Ofgem will continue to monitor closely the way in which this market operates and take any action as appropriate.

Yours faithfully,



Andrew Wright  
**Managing Director, Markets**

---

<sup>1</sup> Ofgem: 'Enforcement Guidelines on Complaints and Investigations' - Chapter 3