



To energy network companies,
investors, customer groups and
other interested parties

*Promoting choice and value for
all gas and electricity customers*

Direct Dial: 020 7901 7165
Email: Hannah.Nixon@ofgem.gov.uk

Date: 2 February 2010

Dear colleagues,

Decision letter to suspend Ofgem's existing policy for mergers between energy network companies pending review

On 7 December 2009 Ofgem published a consultation letter¹ setting out its minded to position to suspend its existing merger policy pending review. Any mergers occurring during the review period would be reviewed on a case by case basis. The letter set out the rationale behind our minded to position and invited views on the approach. This letter sets out our decision.

Ofgem's decision

We have considered the responses to the consultation. All non-confidential responses can be found on the Ofgem website². While we recognise the concerns raised by some respondents, we have decided to undertake a review to ensure our policy remains fit for purpose. We will therefore suspend our existing merger policy until this review is complete. Any mergers occurring during this time will be considered on a case by case basis. We consider this approach to be in the best long-term interests of consumers ensuring that any mergers during this period are assessed appropriately. The suspension is effective immediately.

The changes in the ownership structure of the energy networks seen over the last few years, in particular the smaller number of independent groupings in the electricity distribution sector, as well as potential future mergers, raise a number of questions with regards to the treatment of mergers in the sector. A review of Ofgem's merger policy is therefore required.

We understand the desire of some respondents for certainty over our treatment of potential mergers. We therefore aim to conclude our review of merger policy as quickly as practicable. We plan to consult on our proposals for the revised merger policy in spring 2010 and to publish the revised policy in the summer. We also provide below an indication of the issues that we will consider in determining our approach in the interim.

¹ Consultation on the suspension, pending review, of our existing merger policy for mergers between energy network companies (available from http://www.ofgem.gov.uk/Networks/Policy/Documents1/L-mergers_Dec09.pdf)

² Available from <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=261&refer=Networks/Policy>

Case by case review of intended mergers in the interim

In order to provide greater clarity and transparency to the industry, the types of issue that we would consider in determining our case by case approach to an intended merger include³:

- Is there is a loss in the number of independent comparators in the sector? If so, what is the likely impact of this on the results of any comparative efficiency analysis in the sector?
- Does the merger significantly change the distribution of market share within the network sector? If so, does this raise any relevant issues?
- Does the merger result in an entity owning both distribution and transmission licences within either the gas or the electricity industry? If so, does this raise any relevant issues?
- Does the merger result in an entity owning both gas and electricity network licences? If so, does this raise any relevant issues?

Any parties considering merger transactions during the policy review period should consider whether the proposed transaction raises issues under the headings above, and any other matters they consider to be relevant, and propose to us mitigating undertakings as appropriate. We will consider these in determining our policy response. This is a similar approach to that taken for the sale of National Grid's gas distribution network businesses.

If you have any questions on this letter then please contact me on 020 7901 7165.

Yours sincerely,

Hannah Nixon
Partner, Regulatory Review

³ This is an indicative list of the type of issue we would consider - it is not however intended to be exhaustive.