

The reasons for our determinations on Scottish and Southern Energy Power Distribution Ltd's 21 January 2013 application to charge an unregulated margin on certain contestable connections services

1 Summary

- 1.1 This document contains the reasons for the Gas and Electricity Markets Authority¹'s decisions on whether Scottish and Southern Energy Power Distribution Ltd (SSEPD) has passed the 'competition test' in three market segments.
- 1.2 The decisions constitute determinations on 29 April 2013 made under Part E of Charge Restriction Code (CRC) 12 (Licensee's Connection Activities: Margins and the development of competition), on whether SSEPD, a Distribution Network Operator² (DNO), should be allowed to earn an unregulated margin on certain connections work.
- 1.3 SSEPD submitted to us a Competition Notice on 21 January 2013 on behalf of its two Distribution Service Areas (DSAs): Scottish Hydro Electric Power Distribution (SHEPD) and Southern Electric Power Distribution (SEPD). This application was made for three Relevant Market Segments³ (RMS) in each DSA. These segments are:
 - Metered demand connections - high voltage work;
 - Metered demand connections - high voltage and extra high voltage work; and
 - Metered distributed generation - high voltage and extra high voltage work.
- 1.4 We consulted⁴ on SSEPD's Competition Notice which closed on 18 March 2013. Having considered the Competition Notice and responses to our consultation, **we have not allowed an unregulated margin in any of these segments**. We have made this decision on the basis that we have not seen sufficient evidence at this stage that customers' interests would be protected if we removed price regulation.
- 1.5 Our determinations can be found on our website.⁵ This document provides reasons for our determinations. Appendix 1 of this document summarises the responses received to our consultation.

2 Background

- 2.1 We have been working to facilitate competition in electricity connections since 2000. New entrants can compete with DNOs to give customers a choice over their connections provider and an opportunity to shop around to get good service and value for money. We consider that competition can deliver customer benefits that are difficult to achieve through regulation, such as innovation in the type of services on offer and a focus from providers on meeting customer needs.

¹ The terms 'the Authority', Ofgem and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

² As defined in condition 1 of Standard conditions of the Electricity Distribution Licence

³ As defined in Part K of CRC 12

⁴ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=450&refer=Networks/Connectns/CompinConn>

⁵ <http://www.ofgem.gov.uk/Networks/Connectns/CompinConn/Pages/CompinCnnectns.aspx>

- 2.2 In 2009-10 we explained that we had been disappointed with the pace at which competition had developed in the electricity connections market. This was against a backdrop of 87 per cent of metered electricity connections (across Great Britain) being completed by the incumbent DNO, compared to 41 per cent in the gas connections market.
- 2.3 To encourage further competition to develop, we introduced an incentive on DNOs to do all that is within their control to facilitate competition in connection services.⁶ For the purpose of this incentive we defined RMSs in which we considered competition to be viable.⁷ DNOs are able to apply to have price regulation lifted in an RMS where they can demonstrate that competition is effective. We have made it clear to DNOs that where effective competition has not developed by 31 December 2013, we will review the market and consider taking action, including making a referral to the Competition Commission.
- 2.4 We have already considered applications made by four DNOs - Electricity North West Ltd (July 2011), Northern Powergrid (June 2012), UK Power Networks Ltd (July 2012) and Western Power Distribution (October 2012). Our determinations on these applications can be found on our website. We are also currently considering a further application made by Electricity North West Ltd (January 2013).

3 Our assessment

- 3.1 Our determinations on whether to lift price regulation are based on consideration of our statutory duties and our view on whether SSEPD has met two tests: a Legal Requirement Test and a Competition Test.
- 3.2 Our assessment of the Competition Test is a regulatory decision. It does not amount to or imply any particular view as to the application or interpretation of the Competition Act 1998, and/or Articles 101 and 102 of the Treaty on the Functioning of the European Union, or any other law, either prior to this regulatory decision or once this regulatory decision is in place.
- 3.3 We are required to make separate determinations for each RMS applied for in each of the two licensed distribution networks.

Legal Requirement Test

- 3.4 SSEPD has satisfied the Legal Requirement Test in all three of the RMSs in both DSAs as it currently has no enforced breaches of the Competition Act 1998 or of the relevant connections related conditions in the 2012-2013 regulatory year.

Competition Test

- 3.5 We have assessed whether the Competition Test is met after considering a number of factors, including -

⁶ Introduced at Distribution Price Control Review 5 (DPCR5) - further information can be found in our document DPCR5 Final Proposals Incentives and Obligations (REF: 145/09) which is available on the Ofgem website at: <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=348&refer=NETWORKS/ELECDIST/PRICECTRLS/DPCR5>

⁷ A policy decision was made at DPCR5 to establish the RMSs after consideration was given to the different types of connection (ie by size, type and customer base) for the purposes of this test. While we consider that they are relevant in that context, any definition of the 'relevant market' for the purposes of competition law would not necessarily segment the market in the same way.

- actual and potential levels of competition
- procedures and processes in place to facilitate competition
- barriers to competition
- customer awareness of competition, and
- SSEPD's efforts to open up non-contestable activities to competition.

3.6 In making our assessment we considered the nature of each RMS, the analysis provided by SSEPD on the current level of competitive activity in its area, as well as information about the processes it has in place to facilitate competition. We also considered responses to our consultation which provided us with further insight into the competitive environment in SSEPD's two DSAs.⁸

3.7 Our assessment is set out in this document and is based on all of the factors listed above. The actual level of competition in the RMSs is discussed under the heading 'existing competitive activity'. Customer awareness of competition is discussed under the heading 'customer awareness of and ability to choose competitive alternatives'. Potential levels of competition, procedures and processes in place to facilitate competition, barriers to competition and efforts to open up non-contestable activities to competition are discussed under the heading 'the potential for further competition'.

Existing competitive activity

3.8 We examine in this section current levels of activity by SSEPD and alternative providers (Independent Connection Providers (ICPs) and Independent Distribution Network Operators (IDNOs)) in each of the three RMSs in both DSAs.

3.9 The information set out in this section is drawn from SSEPD's 21 January 2013 Competition Notice and from subsequent clarifications received from SSEPD.

3.10 Throughout this section, and elsewhere in this document, we refer to two types of quotations -

- A Point of Connection (POC) quotation. This is a quotation issued by SSEPD to carry out non-contestable work only.
- An 'all works' quotation. This is a quotation issued by SSEPD to carry out all the works (contestable and non-contestable) associated with a new connection.

3.11 We examine each of the three RMSs in turn.

Metered demand connections – HV work

3.12 This section looks at activity by SSEPD and competitors in the Demand HV market segment in both geographical areas. Table 1 provides the relevant information.

⁸ A summary of consultation responses can be found at Appendix one and responses are available on our website.

Table 1: Demand HV – Information on competitive activity

	SHEPD	SEPD
Alternative providers in the RMS (Sep 2010 – July 2012)		
Number of ICPs/IDNOs to whom POC quotes were issued	11	33
Number of ICPs/IDNOs to whom at least 2 quotes were issued in the period	10	21
Number of ICPs/IDNOs that accepted at least one POC quote	10	6
Quotes issued and accepted (Aug 2010 – May 2012)		
Number of POC quotes issued by SSEPD	125	410
Number of 'all works' quotes issued by SSEPD	3,012	3,382
Number of POC quotes accepted	22	16
Number of 'all works' quotes accepted	1,105	1,052
SSEPD share of contestable works (number of 'all works' quotes accepted as a percentage of all accepted quotes)	98.0%	98.5%

Source: SSEPD Competition Notice January 2013 and data provided by SSEPD in response to clarification questions.

3.13 We make the following observations based on the information provided.

- 10 parties in the SHEPD area and 21 parties in the SEPD area have been issued at least two POC quotes from SSEPD in the period between September 2010 and July 2012. In addition, a further 12 parties in the SEPD area have requested a single POC quote.
- A number of different independent providers appear to have won contracts to carry out contestable works in both DSAs. We can infer this from the fact that 10 different parties in the SHEPD area and 6 parties in the SEPD area have accepted at least one POC quote in the relevant period.
- However, SSEPD has only issued 125 POC quotes in the SHEPD area and 410 POC quotes in the SEPD area, compared to over 3,000 'all works' quotes in each of these areas. This suggests that only a small fraction of projects has gone through a competitive process; if every POC quote issued was for a unique project this would equate to four per cent of all quotes issued in SHEPD and 10 per cent in SEPD.
- 98 per cent of all accepted quotations in the SHEPD area and 98.5 percent of all accepted quotations in the SEPD area are for 'all works'. This implies that in over 98 per cent of connection projects, SSEPD has carried or will carry out both contestable and non-contestable work. This suggests that, in the overwhelming majority of projects, the customers either do not seek a competitive alternative, or where they do, they prefer an SSEPD 'all works' offer to any competing ICP/IDNO offer.

3.14 We draw the following conclusions on the levels of competitive activity in both DSAs.

- Several independent providers are attempting to enter the market and compete with SSEPD. This is evident from the number of such providers seeking POC quotations.
- Independent providers have, so far, enjoyed limited success in competing with SSEPD; only a handful of POC quotes have been accepted in either DSA.

- SSEPD has carried out the contestable works in a large share (98 per cent or higher) of the projects in both DSAs.

Metered demand connections - HV and EHV work

3.15 This section looks at activity by SSEPD and competitors in the Demand HV and EHV market segment in both DSAs. Table 2 sets out relevant information.

Table 2: Demand HV and EHV - Information on competitive activity

	SHEPD	SEPD
Alternative providers in the RMS (Sep 2010 – July 2012)		
Number of ICPs/IDNOs to whom POC quotes were issued	8	5
Number of ICPs/IDNOs to whom at least 2 quotes were issued in the period	5	1
Number of ICPs/IDNOs that accepted at least one POC quote	2	0
Quotes issued and accepted (Aug 2010 – May 2012)		
Number of POC quotes issued by SSEPD	19	7
Number of 'all works' quotes issued by SSEPD	67	21
Number of POC quotes accepted	3	0
Number of 'all works' quotes accepted	18	5
SSEPD share of contestable works (number of 'all works' quotes accepted as a percentage of all accepted quotes)	85.7%	100.0%

Source: SSEPD Competition Notice January 2013 and data provided by SSEPD in response to clarification questions.

3.16 We make the following observations based on the data provided.

- This is a market segment with a relatively small number of new connections, particularly in the SEPD area.
- SSEPD has issued 19 POC quotes to 8 different parties in the SHEPD area and 7 POC quotes to 5 different parties in the SEPD area in the period between October 2010 and July 2012.
- It appears that alternative providers have had limited success in this market segment. Of the 19 POC quotes issued to alternative providers, only 3 were accepted (by two different alternative providers) in SHEPD. None were accepted in the SEPD area.
- 85.7 per cent of all accepted quotations in the SHEPD area and 100 percent of all accepted quotations in the SEPD area are for 'all works'. In the SHEPD area, this implies that independent providers carry out the contestable work in up to 14.3 per cent of the projects with accepted quotations. In the SEPD area, no contestable work has been or will be carried out by alternative providers in relation to quotations accepted in the period.

3.17 We draw the following conclusions on the levels of competitive activity in both DSAs:

- This is a relatively small market segment (in terms of the number of new connections). Despite this, several independent providers have attempted to enter the market and compete with SSEPD.
- Independent providers have, so far, enjoyed limited or no success in competing with SSEPD. SSEPD has carried out contestable works in a large share of the projects in the SHEPD area, and in all of the projects in the SEPD area.

Metered distributed generation - HV and EHV work

3.18 This section looks at activity by SSEPD and competitors in the Generation HV and EHV market segment in both geographical areas. Table 3 sets out the relevant information.

Table 3: Generation HV and EHV - Information on competitive activity

	SHEPD	SEPD
Alternative providers in the RMS (October 2010 – July 2012)		
Number of ICPs/IDNOs to whom POC quotes were issued	Data not provided	28
Number of ICPs/IDNOs to whom at least 2 quotes were issued in the period	Data not provided	15
Number of ICPs/IDNOs that accepted at least one POC quote	Data not provided	18
Quotes issued and accepted (August 2010 – May 2012)		
Number of POC quotes issued by SSEPD	899	89
Number of 'all works' quotes issued by SSEPD	872	285
Number of POC quotes accepted	122	21
Number of 'all works' quotes accepted	239	76
SSEPD share of contestable works (number of 'all works' quotes accepted as a percentage of all accepted quotes)	66.2%*	78.4%

Source: SSEPD Competition Notice January 2013 and data provided by SSEPD in response to clarification questions.

* see discussion below

3.19 There is an important difference in SSEPD's practice of issuing quotes in the two distribution service areas over the period to which the data in the table relate.

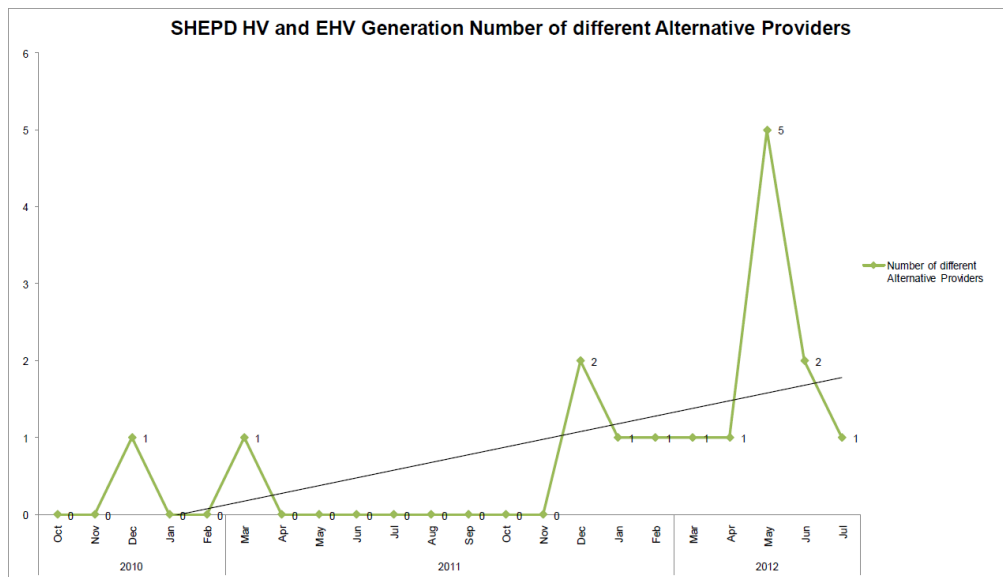
- In SHEPD, a POC quote was always issued together with an 'all works' quote.
- In SEPD, that practice was not followed until it was introduced in December 2012.

3.20 The data suggest that several alternative providers have attempted to compete with SSEPD in the SEPD area. Fifteen parties have been issued at least two POC quotes in the period between October 2010 and July 2012, and 89 POC quotes were issued in total compared to 285 'all works' quotes in the same period.

3.21 The available information is less clear about the activity of alternative providers in the SHEPD area. SSEPD has issued 899 POC quotes and 872 'all works' connection quotes in the SHEPD area.

3.22 In response to a clarification question, SSEPD told us that, of the 899 POC quotes issued in the SHEPD area, 872 were issued directly to the customer (or their consultant) and 27 were issued to alternative providers (ICPs/IDNOs). The large number of POC quotes issued directly to customers in SHEPD is explained by SSEPD's practice during the period (as stated in the Competition Notice) of always issuing both a POC quote and an 'all works' quote in this market segment in the SHEPD area.

3.23 SSEPD did not provide information for the SHEPD area about the number of unique ICPs/IDNOs that have been issued POC quotes over the same period. The information provided by SSEPD in their Competition Notice suggests that there are few active ICPs/IDNOs seeking quotes in the SHEPD area, at least in the relevant period. The graph at the bottom of page 36 of SSEPD's Competition Notice (copied below) implies that no more than one provider was issued POC quotations in most months in that period.



3.24 We sought clarification from SSEPD on the number of alternative providers that have actually carried out contestable work in the SHEPD area. In response, SSEPD provided us with details of four projects in the SHEPD area completed in 2012-2013 where an alternative provider had carried out the contestable works, and a further four projects in progress where the POC quote had been accepted by an independent provider. These eight projects were carried out by five different alternative providers.

3.25 We note the following statement made by SSEPD in Competition Notice submission, page 34:

"In SHEPD, alternative providers have won 122 out of 361 projects which equates to 33.8%. The equivalent figure in SEPD shows 21 out of 97 projects won by alternative providers, showing 21.6% were won by alternative providers."

- 3.26 We sought clarification from SSEPD about these statements. SSEPD told us that these are to be interpreted to mean that in the relevant period, 122 POC quotes were accepted out of a total of 361 accepted quotes (POC and 'all works') in the SHEPD area. Similarly 21 POC quotes were accepted out of a total of 97 accepted quotes in the SEPD area.
- 3.27 If the interpretation by SSEPD is correct and the number of POC quotes accepted equates to the number of projects won by alternative providers, this still demonstrates that SHEPD retain a significant market share of 66.2 per cent. We also have not been provided with evidence of what is happening in the remainder of the market, including how many competitors are active and what proportion of the work is being won by each competitor.
- 3.28 However, we believe that SSEPD's policy of issuing a POC quote to all applicants appears to be good practice and provides and increase the likelihood that a customer may explore using alternative providers.
- 3.29 In the SEPD area we have seen evidence that:
- Several alternative providers (ICPs/IDNOs) have applied for, and accepted POC quotations from SSEPD. There are 28 different parties that have requested POC quotes and 18 parties have accepted at least one quote over the period.
 - Alternative providers have been involved in 21 projects out of a total of 97 projects over the period.

All RMSs

- 3.30 Across all of the market segments covered by their application, SSEPD has retained the majority of connections work. SSEPD outline in their Notice their analysis of average prices in the RMSs compared to the DNO average (with data taken from each DNO's Common Charging Methodology). Their analysis indicates that both SHEPD and SEPD have a lower average price than the average price they had calculated for all DNOS. SSEPD also note that competitors have highlighted the difficulty of competing against SSEPD in the RMSs on a price basis.
- 3.31 SSEPD may retain the majority of the market due solely to the competitiveness of their pricing strategy. If this is the case then we would expect competitors to be more likely to win a greater share of work should SSEPD raise their prices to an uncompetitive level. However we also have to consider whether there are other factors that could restrict competition and whether SSEPD has provided sufficient evidence that these factors are not applicable in the RMSs.

Customer awareness of and ability to choose competitive alternatives

- 3.32 An important factor that contributes to effective competition is for customers to be aware that they have a choice between competing providers, and that customers are able to make informed decisions on which provider to use.

Promoting awareness of competitive alternatives

- 3.33 SSEPD quotes the results of a customer survey it carried out between May and July 2011 which asked customers whether they were aware that they could have had some part of their job carried out by others. The respondents surveyed were a random sample of SSEPD customers. The Competition Notice states on page 10 that "67.5% of customers confirm that they are aware that elements of their quotation could be provided by an alternative provider." However, in response to a clarification question, SSEPD informed us that the majority, 87 per cent, of the customers surveyed were customers in segments other than the three segments that relate to the Competition Notice. Of the 13 per cent of respondents that are directly relevant, all were customers in the Demand HV market segment; all of these said they were aware that some work could be undertaken by other parties. None of those surveyed were customers in either Demand HV/EHV or Generation HV/EHV market segments.
- 3.34 We note the measures to make customers aware of competition that SSEPD has highlighted in its Competition Notice. The pages of the website providing the introductory guidance to developers and to generators seeking connection include in a prominent place the statement "You can seek alternative estimates or quotations from independent connections providers (ICPs)". Links are provided to the Lloyds Register of accredited providers.
- 3.35 SSEPD provides evidence that it makes customers aware that alternative providers may carry out the contestable elements of a project at the stage of providing a quotation. SSEPD states that, from the start of December 2012, in its quotation for a project in any one of the three RMSs it sets out a quote for carrying out all the work and a quote for carrying out just the non-contestable elements of work. SSEPD includes in its quotation a paragraph informing customers that some of the work covered by the 'all works' quotation can be carried out by alternative providers and it gives a link to the website of the Lloyds Register.
- 3.36 One of the respondents finds that SSEPD could do more to promote competition at the application stage. It states that SSEPD's website provided little information to developers and that the linked Lloyds Register list is less than customer friendly in helping customers choose an ICP. That respondent finds that the "web site does not guide a developer through the options path he can choose leaving customers to unravel any differences which adds a layer of complexity they could avoid."

Transparency of pricing and giving customers the ability to choose

- 3.37 To be able to make an effective choice, customers should be able to compare the prices that will be charged by the incumbent DNO with those that may be charged by an alternative provider.

- 3.38 SSEPD states that since December 2012, it offers a quotation for 'all works' and a separate 'non-contestable works only' quote for all projects in the three RMSs covered by their Competition Notice. This practice had already been implemented in the SHEPD area for Generation HV/EHV projects. Customers are allowed to either accept the non-contestable offer and separately appoint the alternative provider to carry out the contestable work, or to accept the 'all works' quotation from SSEPD. A respondent to our consultation finds this is best practice amongst the DNOs. One other respondent stated that this practice had not yet been fully implemented in all RMSs. SSEPD has since confirmed that they have implemented this policy in all three RMSs covered by their Competition Notice.
- 3.39 A third respondent, found that SSEPD's point of connection quotations "are sometimes difficult to understand and lack transparency in relation to setting out the content of the work. Normally we can contact the designer and get a better understanding *but this takes us time and effort to find the detail out.*"
- 3.40 Responses to our consultation, and market research put forward by SSEPD itself, showed that customers find that the validity period on SSEPD quotes, 30 days, is very short. The concern, as expressed by a respondent to the consultation, is that within that time frame "*obtaining a competitor quote, comparing it and taking it through board decision for the customer is very challenging.*" In this light, the relatively short validity periods of quotes may limit customers' effective ability to seek and choose between competing quotes. We revisit the concern over the validity period of SSEPD's quotes, and SSEPD's actions to address this, further below.

The potential for further competition

- 3.41 In this section we consider the potential for further competition to develop, the procedures and processes in place to facilitate competition, whether there are barriers to competition and SSEPD's efforts to open up non-contestable activities to competition.
- 3.42 We recognise that if SSEPD's processes and procedures are similar across DSAs and the nature of work is broadly equivalent, then there should be potential for similar levels of competition across RMSs.
- 3.43 We also note that higher levels of competition may appear in RMSs that consist of higher value, larger projects and that smaller projects may be less commercially attractive to competitors.
- 3.44 In the case of SSEPD's Competition Notice however, we have not seen sufficient evidence of competition in any RMS, or on the nature and value of work being won by competitors, to draw conclusions on the potential for competition to develop beyond its current level.
- 3.45 However, we note that a number of issues have been raised that may impact upon the potential for competition to develop in the three RMSs, in each of the two DSAs. These relate both to the extent to which SSEPD's procedures and processes facilitate competition and others factors that may serve as barriers to competition.
- 3.46 Our understanding of these issues has been informed by responses to our consultation and also SSEPD's own market research, which indicated that 67 per cent of ICPs active in the SSEPD areas (both SEPD and SHEPD) considered that at

least one type of barrier to competition was present. The market research data are not broken down by RMS or by DSA.

- 3.47 In the discussion below we also refer at times to potential barriers to competition – generic to GB electricity distribution networks and not specific to SSEPD - that have previously been identified by the Electricity Connections Steering Group (ECSG) and by the Competitive Networks Association (CNA).

Availability of guidance and information for ICPs/IDNOs

- 3.48 Thirty six per cent of those alternative providers who responded to SSEPD's market research and who were active in SSEPD's DSAs identified "*requesting information*" as a barrier to entry. The market research question is a general one and does not identify the specific areas where respondents have concerns about available information. SSEPD quotes comments relating to this question from some of those surveyed. These include suggestions that SSEPD "*could provide more information as it would make it easier for us to build assets for them to adopt*". SSEPD states that "*many respondents raised the suggestion of free desktop study or informal discussions and advice about their designs.*"
- 3.49 The lack of information necessary for alternative connection providers to develop project designs that meet the requirements of the DNO, so that the DNO may subsequently adopt the extended network, could increase the timeframes for adoption. It can also increase the risk that the assets built are not subsequently adopted by the DNO without costly remedial work. This uncertainty could increase the difficulty for ICPs to compete with the DNO for contestable works.
- 3.50 One of the respondents to the consultation stated that the G81⁹ information available from SEPD for 33kV schemes is very limited.
- 3.51 In its response on how it has addressed this potential issue, SSEPD states that it has made its Geographic Information Systems (GIS) maps available online. It has developed booklets with information relevant to different stages of the process. This material is now available in an easy to find section of its website.
- 3.52 Having identified from its market research that information availability is an issue SSEPD has not demonstrated to us how the actions it has taken - making its maps available and producing booklets with information about different stages of the process - address the areas of concern. The comments of respondents that are quoted by SSEPD and one of the responses to our consultation point to difficulties in accessing information on design and technical matters. It is not clear to what extent this is resolved by the response actions described by SSEPD.

Service and response times

- 3.53 Both the ECSG and the CNA have identified the time taken by DNOs in general as a potential barrier to competition. They were concerned that DNOs take the same level of care in dealing with activities that lie outside the scope of their licence obligations on guaranteed service standards (SLC15). This is not specific to SSEPD.
- 3.54 Market research commissioned by SSEPD, the results of which were presented in the SSEPD Competition Notice, identified 'timelines' as one the biggest areas of

⁹ G81 is an engineering recommendation for low voltage housing development installations and associated new HV/LV distribution substations.

concern for competitors. Of the ICPs surveyed in the research, 45 per cent said that this posed a barrier to competition in the SSEPD areas. SSEPD provides three specific comments from respondents:

“they could improve timescales”

“we are unable to commit to timescales to clients as they [SSEPD] do not adhere to timescales”

“they could have quicker response times in terms of technical queries”

- 3.55 Two of the respondents to our consultation on SSEPD’s Competition Notice also stated that the time taken by SSEPD to respond to queries was problematic.
- 3.56 It seems reasonable that alternative providers would be reliant on the promptness of SSEPD. This might include the time taken to respond to requests for quotations, responding to technical clarifications about proposed designs and requests for SSEPD to organise an inspection visit — be it during the construction phase and on completion.
- 3.57 We recognise that unduly long timeframes to handle requests by alternative providers might hamper the ability of alternative providers to compete with SSEPD. And uncertainty about these timeframes might increase the risk — in the eyes of the final customer — of using an alternative provider.
- 3.58 In describing how it has addressed concerns about timescales, SSEPD sets out in its Competition Notice information about its response time to requests for quotations, and compares this to SLC 15 Standards¹⁰ as outlined in the table on page 59 of SSEPD Competition Notice (copied below).

RMS	Average time to Quote	SLC15 Standards ⁶
Demand HV	12.28	20 working days
HV and EHV Generation	35.05	50 working days
Demand HV and EHV	23.46	65 working days

- 3.59 We note that SSEPD perform on average well within the SLC 15 standards. It is not clear however the extent to which the concerns relating to timescales raised by 45 per cent of those surveyed by SSEPD’s market research relate specifically and solely to the time taken to provide quotes.

Quotation validity periods

- 3.60 Fifty-five percent of respondents to SSEPD’s market research identified the ‘*validity period of quotations*’ as a barrier when competing for contestable work. Respondents said that SSEPD’s validity period for quotes, 30 days, was too short and that other DNOs’ quotes were valid for 90 days.

¹⁰ Standard Licence Condition 15 of the Electricity Distribution Licence sets out the Standards for the provision of Non-Contestable Connection Services.

- 3.61 This perception was echoed in the responses to the consultation: three of the four respondents identified the short validity period of the quotes as a difficulty.
- 3.62 It seems reasonable that, compared to a 90 day validity period, a 30 day validity period increases uncertainty for ICPs and IDNOs. The fact that other DNOs might offer 90 day validity does not mean that SSEPD should do so themselves, nor does it mean that quotes that have a 90 day validity period do not themselves carry risks for alternative providers.
- 3.63 However, from the evidence provided, it seems reasonable to conclude that competitors perceive SSEPD's 30 day validity period as a potential barrier to competition in the two DSAs.
- 3.64 SSEPD has explained that the main reason for having a 30 day validity period is due to capacity constraints in their network, particularly in the North of Scotland. This makes it more likely for interactive quotations to appear — where there are alternative live quotations for the same spare capacity — making the process more complex.
- 3.65 In their Competition Notice, SSEPD said that they have noted these concerns and have introduced two options of extending the quotation period; (i) an extension of 10 working days where the quotation has not expired and the offer has not already been extended, and (ii) a policy of 'revalidation', whereby ICPs/IDNOs can apply to have their quotations revalidated (at SSEPD's discretion) up to three times for additional periods of 30 days each, potentially making the quotation valid for up to 120 days.
- 3.66 One respondent to our consultation said that the policy of revalidation does not reduce the uncertainty because there is no guarantee that the quote would be revalidated by SSEPD. In response, SSEPD has pointed out that since the application of the revalidation process in August 2012, 39 customers have used this option in the three RMSs. We do not know how many of the 39 customers were ICPs.

Contractual arrangements for the adoption of assets built by ICPs

- 3.67 The ECSG has identified that the arrangements put in place by DNOs in relation to the adoption of assets built by ICPs are a potential barrier to competition. In particular, the ECSG raise the issue of security arrangements (bonds) to protect the DNO against any liability in case there is a fault in the adopted network. This is not specific to SSEPD.
- 3.68 SSEPD's market research does not identify such requirements as a potential issue within the SSEPD area.
- 3.69 Separately, one respondent to our consultation has raised a concern over SSEPD's requirement for ICPs and customers to enter into a tripartite agreement with itself before it will adopt the assets built by the ICP. The respondent claimed this creates delays and acts as a barrier to competition.
- 3.70 In response, SSEPD suggests that tripartite agreements are necessary to "*protect all parties involved should any defects occur on the contestable works installed*". SSEPD has not provided evidence on the extent to which it believes this issue is acting as a barrier to competition or the steps it has taken to address this concern. SSEPD understand that a number of other DNOs also require tripartite agreements, and that it would be willing to consider industry-wide alternatives if they could be agreed upon.

Inspection and monitoring of assets built by ICPs

- 3.71 The ECSG has raised the issue of inspections and monitoring of assets built by ICPs as a potential barrier to competition. In particular, it questioned the proportionality of the cost and time taken by DNOs to inspect these assets.
- 3.72 SSEPD's own market research has not identified this as a particular concern of competitors in their areas.
- 3.73 Two respondents to the consultation identified the inspection and monitoring practices of SSEPD as a problem. They raised concerns over the level of inspection fees charged by SSEPD, as well as the time taken to organise inspection visits. One of the respondents suggested that the level of inspection and monitoring carried out was disproportionate given the industry accreditation system that is already in place with Lloyds.
- 3.74 SSEPD have not provided any evidence of steps they have taken to address these concerns.

Arrangements for obtaining land rights

- 3.75 The CNA has identified the process of obtaining land rights when an ICP or IDNO carries out the contestable work as a potential barrier to competition. According to them, DNOs can be slow in initiating the process for securing leases, easements etc, and slow in progressing them once begun. Also, the DNOs require all the legal agreements to be in place before they will energise the new connection.
- 3.76 One respondent to our consultation also raised this as one of the reasons "*that mean that we don't really feel we have an effective choice as a DG customer*". According to this respondent, this poses additional risks and "*may deter DG developers from choosing to use an ICP*". This response was made in relation to the Generation HV/EHV market segment in the SHEPD area.
- 3.77 The issue is not unique to SSEPD - ICPs/IDNOs operating in all DNO areas depend on the DNO to obtain the necessary land rights. Nevertheless, SSEPD has not provided any evidence that they have investigated this issue or taken steps to manage or mitigate the risk that customers may face when choosing an ICP or an IDNO.

Scope of contestable work

- 3.78 In our December 2011 consultation on expanding the scope of contestable activities we stated our belief that opening up non-contestable activities to competitors may provide further opportunities and incentives for competition to develop in the connections market. This is because it reduces competitors' reliance on DNOs to provide essential services and it increases the scope of works for which competitors can compete.
- 3.79 SSEPD's market research reports that 30 per cent of those respondents active in either of the SSEPD's licence areas identified '*activities are not open to competition*' as a relevant barrier to entry.
- 3.80 SSEPD states that it has expanded the scope of contestable works by having 'business as usual' arrangements for alternative providers to carry out the final connection to the LV or HV network. It states that it has also carried out trials

with ICPs to allow them to determine the point of connection and that it found ICPs to have limited interest in this activity. SSEPD also states that it is committed to opening up competition in the provision of part funded connections reinforcement.

Geography and location

- 3.81 The market research put forward in SSEPD's competition notice reports that of those alternative providers who are not active in either of the SSEPD's licence areas, 25 per cent identified 'geography/location' as a barrier to entry. SSEPD states that "*the geography and location of our Scottish area, SHEPD, was often cited as an instant barrier. Many respondents felt that it was too far away and that the overheads were too much to warrant entering the market.*"
- 3.82 The evidence put forward by SSEPD points to various alternative providers who are active in both SSEPD areas, including SHEPD. However, we are unable to ascertain whether these providers are active across the entire geographic region.
- 3.83 On a related point, GTC states in its response to our consultation that "*in the SHEPD area the biggest issue an IDNO has is providing Emergency Response in a timely fashion to remote areas in all weather conditions.*"

Our conclusions

- 3.84 In making our determination we have taken account of all the evidence that has been provided by SSEPD and the views expressed in response to our consultation.
- 3.85 We have seen evidence that alternative providers are attempting to compete with SSEPD in each RMS in the SEPD and SHEPD areas.
- In the Demand HV market segment, SSEPD has been awarded the contestable works in a very high proportion of accepted projects across both SHEPD and SEPD areas (over 98 per cent).
 - In the Demand HV/EHV segment, it was awarded the contestable work for all of the projects in the SEPD area and for around 86 per cent of those in the SHEPD area.
- 3.86 In the Generation HV/EHV market segment, alternative providers appear to have met with greater success. In this segment, alternative providers have been awarded the contestable work in 22 per cent of the projects in the SEPD area. In the SHEPD area, SSEPD has stated that alternative providers have been awarded 34 per cent of the contestable works.
- 3.87 In considering how its procedures and processes might facilitate competition we note that SSEPD has introduced a policy of issuing a POC quote and an 'all works' quote by default in all three RMSs in both DSAs. Customers are allowed to either accept the non-contestable offer and separately appoint an alternative provider to carry out the contestable work, or accept the 'all works' quotation from SSEPD. A respondent to our consultation highlighted that this is best practice amongst the DNOs. We think this is a positive step towards making it easier for customers to compare and choose between alternative providers for contestable work.
- 3.88 We also note SSEPD has extended contestability to live jointing to LV and HV networks and has made itself available for trials of ICPs to self-determine the Point of Connection.

- 3.89 SSEPD's own market research and respondents to our consultation have identified that there may be a number of barriers to competition across the relevant market segments and across the two distribution service areas. These include:
- The short validity periods associated with SSEPD's quotations.
 - The length of time taken by SSEPD to handle technical queries and other requests from customers and alternative providers.
 - The level of technical guidance and information provided for potential competitors.
 - SSEPD's policies in relation to adoption agreements, inspection and monitoring and arranging land rights.
 - 'Geography/location', particularly in relation to the SHEPD DSA, may discourage competitors from operating in this region.
- 3.90 In considering the level of market activity by competitors and the material provided by SSEPD on these issues, we have seen insufficient evidence to assure us that there are no barriers to effective competition in these market segments. While we recognise that SSEPD could retain market share because it is competitive in terms of cost, we do not consider that we have seen sufficient evidence that other factors may not be acting as barriers.
- 3.91 We therefore consider that we have not seen sufficient evidence at this stage that customer's interests would be protected if we removed price regulation in any of the three RMSs in each of the two DSAs covered by SSEPD's 21 January 2013 Competition Notice.
- 3.92 Given the above, we do not consider that the Competition Test has been satisfied at this point in these three RMSs in the two DSAs.

4 Next steps

- 4.1 We will continue to regulate the prices charged by SSEPD in respect of all of the connection services it provides in these RMSs. In respect of contestable connections services (fully funded by the customer), this means that SSEPD may continue to charge the regulated margin (fixed at four per cent) allowed by Charge Restriction Condition (CRC) 12.
- 4.2 SSEPD may reapply to have price restrictions lifted by providing us with further Competition Notices in relation to the relevant RMS. It can do this from four months after the date of our determination and up to 31 December 2013.

Appendix 1 – Responses to our consultation on SSEPD’s 21 January 2013 Competition Notice

- 1.1 On 4 February 2013 we issued a consultation seeking views from interested parties on SSEPD’s Competition Notice. This consultation and the four responses we received are on our [website](#).
- 1.2 Table 4 lists the four respondents together with the relevant market segments and distribution service areas (DSAs) to which their response relates.

Table 1 Respondents to consultation

Respondent	Relevant market segment	Relevant DSA
GTC	Demand HV; Demand HV/EHV	SHEPD; SEPD
Metered Connection Customer Group (MCCG)	Not specified	Not specified
Power on Connection	Demand HV; Demand HV/EHV; Generation HV/EHV	SEPD
RWE npower renewables	Generation HV/EHV	SHEPD

- 1.3 In reaching our decision, we considered all of the stakeholder responses and we have set out our views in the main body of this document. This appendix is our summary of the main issues raised by stakeholders. It is structured in line with the chapters of our consultation.

Customers’ awareness of and ability to choose competitive alternatives

- 1.4 Our consultation invited stakeholders for views on whether customers are aware that competitive alternatives exist and whether SSEPD has taken appropriate measures to promote such awareness, whether customers have effective choice, whether the quotations provided by SSEPD are clear and whether customers have benefitted from competition.
- 1.5 There were mixed views on the question of whether customers are aware of the existence of competitive alternatives.
- RWE npower renewables stated that they are aware of the existence of alternatives to SSEPD.
 - Power on Connections, disagreed with this view, pointing to the relatively low numbers of POC quotations issued in the Demand HV segment.
- 1.6 In response to the question on whether customers have effective choice:
- RWE npower renewables stated that it does have a choice but there are still certain factors that mean they don’t feel they have an effective choice as a DG customer. RWE npower renewables seeks alternative quotations for new connections and has accepted a quote from a competitor in one case. It also considered that SSEPD were showcasing best practice by issuing an ‘all works’ quote alongside a non-contestable works in every case. However, RWE npower renewables note that the validity period for the offer in the SSEPD area is very short and obtaining a competitor quote, comparing it and taking it through board approval for the customer is very challenging. RWE npower renewables also noted certain factors which may deter DG developers from

choosing to use an ICP based on their broad experience across the UK (deemed planning permission rights which an ICP would not have, difficulty in managing two parties instead of one for the customer and the fact that ICPs are still an unknown quantity in terms of their competencies).

- Power on Connections said that although there are competitors, SSEPD's processes made it difficult to compete against SSEPD.

1.7 On whether SSEPD is taking appropriate measures to ensure that customers are aware of the competitive alternatives:

- RWE npower renewables found SSEPD's website to be clear and user friendly. The fact that SSEPD's quotations are in two parts also makes it clear to customers that they have a choice.
- Other respondents disagreed. Power On Connections found the SSEPD website "*not easy to follow*", while GTC said that they were "*not aware of any proactive actions that SSEPD have put to the market to encourage customers to look for alternatives.*"

1.8 On whether the quotations provided by SSEPD are clear and transparent:

- RWE npower renewables stated that SSEPD were showcasing best practice by issuing an 'all works' quotation alongside a non-contestable works quotation in every case. However, this respondent also said that the short validity period offered by SSEPD (30 days) is "*very challenging*" for the customer in terms of obtaining a competitor quote and taking it through board decision. It added that SSEPD's revalidation period "*on the face of it does not extend the amount of time for consideration by very much*".
- GTC said that SSEPD's point of connection quotations are sometimes difficult to understand, and "*lack transparency in relation to setting out the content of the work*".

1.9 On whether customers have benefited from competition:

- RWE npower renewables stated that, in relation to the Generation HV/EHV RMS, the relative infrequency of new connections means that it is too early to say whether effective competition has developed for large scale DG connections in any DNO area.
- Other respondents pointed to the high share of projects where SSEPD has carried out the contestable work as evidence that customers are not benefitting from competition.

The potential for further competition

1.10 This chapter invited views on whether there is potential for further competition to develop and on the structures and practices of SSEPD itself.

1.11 On whether the current levels of competitive activity shows that there is potential for further competition to develop:

- Other respondents agreed that there was potential for further competition to develop. Power On Connections said that this would depend on changes to SSEPD's processes and on SSEPD having lower non-contestable charges.

- 1.12 When asked to comment on SSEPD's business organisation structure, procedures and processes:
- Power On Connections raised a number of points. These included difficulties in establishing who is responsible for different activities at SSEPD, the problems caused by the part time working arrangements of SSEPD staff, and their lack of familiarity with competition in connection processes. It also raised the issue of quotation validity periods and the policy of revalidation.
 - GTC also raised a number of different points on this matter. These include the lack of automation of the quote, design or connection processes, the short validity period of SSEPD quotes and the lack of adequate IT systems.
 - MCCG raised concerns about the lack of information on the SSEPD website for developers.
- 1.13 On whether the non-contestable charges levied by SSEPD are consistent with those levied for competitive quotations, GTC said that it had encountered a higher number of errors in SSEPD quotations than in quotations from other DNOs.
- 1.14 On the factors that influence the development of competition:
- Power On Connections raised the issue of adoption agreements. In particular, its response said that SSEPD's practice of requiring a tripartite adoption agreement (rather than a bilateral one) acted as a significant barrier to competition in the area.
 - GTC put forward the view that IDNOs find it difficult to compete in the SHEPD area due to the practical difficulties in operating without emergency response support from the DNO.

SSEPD's assessment of its share of projects

- 1.15 We asked stakeholders for views on the analysis of the current level of competition set out in SSEPD's Competition Notice and on whether this indicated that effective competition exists.
- 1.16 None of the respondents disputed the data presented by SSEPD. GTC and Power On Connections consider that the data presented reflect the absence of effective competition in the three RMSs and across the two DSAs. MCCG also considers that the data on the share of projects where SSEPD has carried out contestable works for Demand HV projects does not support SSEPD's claim that there is effective competition in that segment.
- 1.17 With respect to the Generation HV/EHV segment, RWE npower renewables finds that the data presented does show significant competitor activity in that RMS and considers that this level of activity is potentially indicative of effective competition. However, it requests further data from SSEPD to show market share by value and notes that other DNOs have provided this.

Lifting of price regulation

- 1.18 We asked stakeholders for views on whether, taking all of the issues discussed in our consultation into consideration, price regulation should be lifted in each RMS.

- 1.19 All respondents agreed that price regulation should not be lifted in any of the relevant market segments in either of the distribution service areas.
- RWE npower renewables said that they are generally unable to support the removal of the price control measures from any DNO because they feel that the evidence presented is insufficient. They felt that the evidence presented by SSEPD suggests that competition has increased in their area but further details would be needed to convince them that price control regulation of the HV-EHV DG connections should be lifted at this time.
 - Power On Connections made a similar point by highlighting their earlier concerns about barriers to competition in the SSEPD areas. Unless these barriers were removed, it did not think competition from ICPs would develop.
 - GTC said that it does not think customers currently have an effective choice in the RMSs being applied for, and therefore it did "*not believe that market conditions are ready for [price regulation to be lifted]*".
 - MCCG expressed the view that price regulation should not be lifted until there is evidence of sufficient competition in the relevant segment. It did not consider that SSEPD's claim that effective competition exists is proven in any segment.