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for energy consumers

**Notice of decision to accept binding commitments from SSE plc**

**Decision of the Gas and Electricity Markets Authority to accept binding commitments from SSE plc, following an investigation into compliance with Chapter II of the Competition Act 1998 and/or Article 102 of the Treaty on the Functioning of the European Union**

**3 November 2016**

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Annex 1 – Commitments given by SSE plc pursuant to section 31A of the Competition Act 1998

## 1. Glossary

**Authority** – the Gas and Electricity Markets Authority, the governing body of Ofgem. For the purpose of this notice, the term also refers to Ofgem as it represents the Authority.

**CA98** – Competition Act 1998.

**CMA** – Competition and Markets Authority.

**Contestable Connection Services** – the services which can be provided by a DNO, IDNO or ICP which are necessary for the provision of a connection to a distribution network.

**DNO** – Distribution Network Operator. Electricity distribution networks carry electricity from the high voltage transmission grid to industrial, commercial and domestic users. Each local electricity distribution network is managed by a DNO. There are 14 licensed DNOs in Britain.<sup>1</sup>

**DSA** – Distribution Service Area. Each DNO is responsible for a regional DSA.

**Electricity Act** – Electricity Act 1989.

**ENW commitments decision** – a decision of the Authority to accept binding commitments from Electricity North West Limited over connection charges.<sup>2</sup>

**GB** – Great Britain.<sup>3</sup>

**HV** – high voltage.

**ICP** – Independent Connections Provider. ICPs develop local electricity distribution networks and then an IDNO or DNO will operate and maintain them.

**IDNO** – Independent Distribution Network Operator. IDNOs develop, operate and maintain local electricity distribution networks.

**LV** – low voltage.

**Non-Contestable Connection Services** – the services which can only be provided by a DNO and which are necessary for the provision of a connection to a distribution network.

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<sup>1</sup> <https://www.ofgem.gov.uk/electricity/distribution-networks/gb-electricity-distribution-network>

<sup>2</sup> A copy of the decision, published on 24 May 2012, is available here:

<https://www.ofgem.gov.uk/sites/default/files/final-draft-17-may.pdf>.

<sup>3</sup> Ofgem is the government regulator for gas and electricity markets in Great Britain. A separate utilities regulator exists in Northern Ireland.

**POC** – point of connection, the point at which a new connection, forming an extension to the local electricity distribution network, connects to that network.

**SEPD** – Southern Electric Power Distribution plc.

**SHEPD** – Scottish Hydro Electric Power Distribution plc.

**SSE** – For the purpose of this notice, the SSE group (SSE, SEPD, SHEPD, SSEPD) is referred to collectively as SSE.

**SSEPD** – Scottish and Southern Energy Power Distribution Ltd.

**TFEU** – Treaty on the Functioning of the European Union.

## **2. Executive Summary**

- 2.1. The Authority has concurrent powers with the CMA to investigate potential infringements of the prohibitions against abuse of a dominant position contained in Chapter II of the CA98 and/or Article 102 of the TFEU.
- 2.2. In January 2015, the Authority opened an investigation into SSE plc because it decided that it had reasonable grounds for suspecting an infringement of the Chapter II prohibition of the CA98 and/or Article 102 of the TFEU. Those reasonable grounds arose from evidence considered during the Authority's 2014 review of competition in the electricity markets.<sup>4</sup> The scope of the investigation only considered the distribution service area of SEPD.
- 2.3. In September 2015, SSE informed the Authority that it wished to offer binding commitments to address the potential competition concerns with SSE's conduct the Authority had identified. As a result of SSE's offer, the Authority continued its investigation, in order to assess the appropriateness of accepting commitments in this case.
- 2.4. In April 2016, the Authority issued its Summary Statement of Competition Concerns to SSE. The three concerns related to conduct by SEPD that could potentially restrict entry and expansion of competitors in the electricity connections market in the area covered by SEPD's DSA.
- 2.5. SSE offered a comprehensive set of commitments in June 2016. Between 22 June and 3 August 2016, the Authority consulted on its intention to accept binding commitments from SSE.<sup>5</sup>
- 2.6. The Authority received five responses to its public consultation. These came from interested stakeholders in the electricity connections market. The responses included:
  - comments on the specific issues relating to SEPD's conduct and its proposed commitments; and
  - general comments regarding the electricity connections market.
- 2.7. Having considered the consultation responses, the Authority is satisfied that the commitments offered by SSE:
  - fully address the competition concerns identified;

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<sup>4</sup> See <https://www.ofgem.gov.uk/publications-and-updates/competition-electricity-distribution-connections-call-evidence>

<sup>5</sup> See

[https://www.ofgem.gov.uk/system/files/docs/2016/06/sse\\_notice\\_of\\_proposal\\_to\\_accept\\_commitments.pdf](https://www.ofgem.gov.uk/system/files/docs/2016/06/sse_notice_of_proposal_to_accept_commitments.pdf)

- are capable of being implemented effectively and within a short period of time; and
  - will not undermine deterrence in this case.<sup>6</sup>
- 2.8. The commitments are set out in Annex 1 below. The text includes minor amendments from the version set out in the notice of our intention to accept binding commitments. The amendments include:
- definitions of metered supply and unmetered supply added; and
  - confirmation that an external auditor's conclusions into SSE's compliance with the commitments will be publically available.
- 2.9. The Authority does not consider the amendments to the text of the commitments to be significant and, therefore, it has not carried out a further consultation on the amended commitments.
- 2.10. The Authority considers that neither compliance with nor the effectiveness of the commitments will be difficult to monitor.
- 2.11. The Authority also considers that accepting the commitments represents the most appropriate and timely use of its resources. The alternative of not accepting commitments would be to continue the investigation which would require significant additional resource before being able to determine whether there had been an infringement of the CA98.<sup>7</sup>
- 2.12. The breadth and relatively quick implementation of the commitments also mean that they are likely to have a greater and earlier benefit for SSE's competitors, developers and other organisations which require connections to the electricity network and, ultimately, energy consumers, than might otherwise be achieved by pursuing a full investigation.
- 2.13. The Authority's decision to accept binding commitments is not a decision on the legality or otherwise of SSE's conduct. The Authority's decision is made on the particular facts of this case, and does not mean that the Authority will reach the same conclusion in similar, future cases.
- 2.14. This document sets out the Authority's final decision on this case. As a result of accepting the commitments, the Authority is closing its investigation with no decision made on whether or not SSE infringed Chapter II of the CA98 and/or Article 102 of the TFEU. Acceptance of the commitments does not

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<sup>6</sup> These criteria are laid out in the CMA's guidance on accepting commitments, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/284436/oft407.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284436/oft407.pdf)

<sup>7</sup> Given the Authority's limited resources it may also have been necessary to consider closing the investigation on resource and administrative priority grounds.

prevent the Authority from reopening its investigation, making a decision or giving a direction in circumstances where the Authority has reasonable grounds for:

- believing that there has been a material change of circumstances since the commitments were accepted;
- suspecting that SSE has failed to adhere to one or more of the terms of the commitments; or
- suspecting that information which led the Authority to accept the commitments was incomplete, false or misleading.

2.15. Furthermore, acceptance of the commitments does not prevent the Authority from taking further enforcement action in relation to different alleged abuses of dominance in the same or related markets which may come to its attention.

### **3. The parties**

- 3.1. SSE plc (company number: SC117119) is a company incorporated in the United Kingdom whose registered address is Inveralmond House, 200 Dunkeld Road, Perth, Perthshire, PH1 3AQ.
- 3.2. SSEPD (company number: SC213459) is also a company incorporated in the United Kingdom with the same registered address as SSE plc. It is wholly owned by SSE plc.
- 3.3. SEPD (company number: 04094290) is a company incorporated in the United Kingdom whose registered address is 55 Vastern Road, Reading, Berkshire, RG1 8BU. SEPD is the holder of a licence, granted by the Authority under section 6 of the Electricity Act, which permits it to distribute electricity in the area described in that licence. That area is in central southern England and incorporates the counties of Berkshire, Buckinghamshire, Hampshire, Oxfordshire and Wiltshire.
- 3.4. SHEPD (company number: SC213460) is a company incorporated in the United Kingdom whose registered address is also Inveralmond House, 200 Dunkeld Road, Perth, Perthshire, PH1 3AQ. It also holds a distribution licence under section 6 of the Electricity Act. It is responsible for electricity distribution in the north of Scotland.
- 3.5. SEPD and SHEPD are both wholly owned by SSEPD. For clarity, the licences referred to in paragraphs 3.3 and 3.4 are the only electricity distribution licences held by SSE.



#### 4. The electricity connections market

- 4.1. The infrastructure which delivers electricity to customers' premises is the distribution network. New connections are made to the distribution network either when new customers want to take electricity off the network - for example, a housing developer or supermarket - or put electricity onto the network - for instance, a generator.
- 4.2. Not all new connections to a distribution network are made by the local electricity DNO. Competition exists for some work. A customer can choose to use an alternative provider for some connections work known as "contestable work". Contestable work can be carried out by:
  - a DNO;
  - an IDNO; or
  - an ICP.
- 4.3. Certain works required for a new connection to a distribution network may only be carried out by the relevant DNO. Those works are termed "Non-Contestable Connection Services".
- 4.4. Effective competition in the market for electricity distribution connections helps to improve the quality of service that customers receive and reduces the cost of connection. Competition can also encourage innovation in the type of services on offer.
- 4.5. Some of the key determining factors which may affect the cost of connecting end customers to the existing network are:
  - i. the **amount of capacity** required by the customer. Generally, the more capacity required by the customer, the more work is required to facilitate the connection (e.g. reinforcing the wider network to accommodate the new capacity).
  - ii. the **level of voltage** at the POC required to connect the customer. Typically, the amount of capacity required and available on the network will dictate whether the customer needs to connect at LV, HV or extra high voltage (or "EHV"). The type of connection may have an impact on the charges for Contestable Connection Services required to connect the customer's site to the DNO's distribution network because of the different costs involved. For example, the cost of HV connections and cables is, generally, higher than for the equivalent LV options. If a HV option is used, the connector (whether that is the DNO or an ICP/IDNO) is likely to need to transform the supply down to LV before it is fed into any premises. This could mean building an additional sub-substation.
  - iii. the **geographical location** of the POC required to connect the customer. This may have an impact on the costs for Non-Contestable Connection Services required to connect the customer to the network. For example,

providing a POC in one location may incur significant costs in reinforcing the distribution network that could be avoided if the DNO chose an alternative location. It may also have an impact on the costs of the Contestable Connection Services required to connect the site to the distribution network (e.g. the civil engineering works). The location of the POC also determines whether legal permissions or consents (such as wayleaves) are needed from landowners in order to place equipment on or under land.

## **5. The Authority's investigation**

- 5.1. Evidence considered during the Authority's 2014 review of competition in the electricity connections markets raised concerns that SSE may have engaged in anti-competitive behaviour when providing Non-Contestable Connection Services in relation to SEPD's distribution network.
- 5.2. In December 2014, the Authority decided that there were reasonable grounds for suspecting an infringement of the Chapter II prohibition of the CA98 and/or Article 102 of the TFEU. As a consequence, Ofgem, on behalf of the Authority, opened an investigation into SEPD's conduct.
- 5.3. On 20 January 2015, the Authority notified SSE that the investigation had been opened and outlined its concerns in relation to SEPD's conduct. The Authority also served a formal notice on SSE requiring the production of documents and information under a notice, requesting documents and information, issued pursuant to section 26 of the CA98. The Authority sent a second section 26 notice on 4 August 2015. SSE has also provided information and documents on a voluntary basis during the investigation.
- 5.4. In September 2015, SSE wrote to the Authority offering to provide commitments to alter its conduct in order to address the concerns that had led the Authority to open its investigation. Following that offer, the Authority undertook considerable further investigation into SSE's behaviour, including contacting certain IDNOs, ICPs and end customers with a view to assessing the appropriateness of accepting commitments in this case.
- 5.5. In April 2016, the Authority sent to SSE a Summary Statement of Competition Concerns, as had been identified through its investigation.
- 5.6. The Authority then informed SSE of its willingness to explore any formally binding commitments that SSE wished to offer. Those discussions concerned the content of the commitments, with a particular view to ensuring that they would be capable of fully addressing the Authority's concerns.
- 5.7. SSE sent a final set of proposed commitments to the Authority on 21 June 2016.
- 5.8. In line with the requirements in paragraph 2 of Schedule 6A of the CA98, the Authority publically consulted on its intention to accept the binding commitments between 22 June and 3 August 2016.<sup>8</sup>

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<sup>8</sup> See

[https://www.ofgem.gov.uk/system/files/docs/2016/06/sse\\_notice\\_of\\_proposal\\_to\\_accept\\_commitments.pdf](https://www.ofgem.gov.uk/system/files/docs/2016/06/sse_notice_of_proposal_to_accept_commitments.pdf)

## 6. Application of competition law

- 6.1. Chapter II of the CA98 prohibits any conduct, on behalf of one or more undertakings, which amounts to an abuse of a dominant position in a market if it may affect trade within the United Kingdom.
- 6.2. Article 102 of the TFEU prohibits, as incompatible with the common market, any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it, insofar as it may affect trade between Member States.
- 6.3. Since the date of application of the Modernisation Regulation on 1 May 2004,<sup>9</sup> the Authority is required to apply Article 102 of the TFEU in addition to the Chapter II prohibition if an abuse of a dominant position “may affect trade between Member States” of the European Union.<sup>10</sup> Since the conduct that is the subject of this investigation occurred after 1 May 2004, the Authority considers that it is under an obligation to apply Article 102 of the TFEU if SSE’s conduct “may affect trade between Member States”. As a result, the Authority conducted its investigation on the basis that the competition concerns identified, if they amounted to an infringement of competition law, may affect trade between Member States, so Article 102 of the TFEU may have been applicable. Because the Authority has not reached a decision as to whether an infringement has taken place, it has not needed to, and has not, come to a definitive view on the possible effect on trade between Member States.
- 6.4. In this case, the Authority has, however, given initial consideration to the relevant product and geographical markets, whether SEPD held a dominant position on those markets, whether the competition concerns identified would, potentially, constitute an abuse of a dominant position and whether, if so, there would have been a possible effect on trade between Member States. The Authority’s preliminary views on these issues are based upon analysis carried out for and reflected in its previous decisions on cases relating to electricity connections – including its ENW commitments decision – and are as set out in paragraphs 6.5 to 6.27. The Authority’s preliminary view is that any intervening market developments have not materially affected that analysis. Had the investigation progressed further, additional steps would need to have been taken to allow the Authority to reach a definitive view.

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<sup>9</sup> See Article 45 of EU Regulation 1/2003 (also known as the “Modernisation Regulation”).

<sup>10</sup> See Article 3(1) of EU Regulation 1/2003 and the wording of Article 102 of the TFEU.

### *Relevant product market for assessing dominance*

- 6.5. As explained in the Authority's ENW commitments decision, for the majority of customers in a DSA who want a reliable source of electricity, there are no cost effective alternatives to connecting to the local DNO's distribution network. A potential demand-side substitute could be procuring a dedicated source of reliable generation. However, many customers are unable to procure the quantity and type of local generation required to secure a reliable source of electricity. Where a customer is able to, it is often an expensive alternative. Indeed, even in the relatively few cases where electricity demand is able to be met through locally-based generation, customers usually maintain a connection to a distribution system to cover for times when their local generation is offline.<sup>11</sup>
- 6.6. As an alternative to connecting to a DNO's network, an IDNO or ICP could ask to connect to a network owned by another IDNO. However, IDNO networks only account for a small proportion of the new electricity distribution assets that have been installed over the past 15 years. IDNO networks are therefore not as prevalent as a DNO's network within the relevant DSA. Connecting to an IDNO is therefore only likely to be a viable alternative for a small proportion of customers wanting a reliable supply of electricity. For the majority of customers, the distance between their premises and the nearest IDNO network is likely to make this option prohibitively expensive. In addition, it may be impractical and inefficient because of difficulties in obtaining wayleaves and land access.<sup>12</sup>
- 6.7. In theory, an IDNO or ICP could also, as an alternative to connecting to the local DNO's network, request to connect to a transmission network (which, in the area covered by SEPD's distribution network, is owned by National Grid Electricity Transmission). However, this is unlikely to be a viable option, as duplication of the DNO's distribution assets is likely to be prohibitively expensive. Customers that are directly connected to the transmission network are subject to different regulatory arrangements to customers that are connected to the distribution network (e.g. they are required to sign the Connection and Use of System Code<sup>13</sup> and are subject to Balancing Services Use of System and Transmission Network Use of System charges<sup>14</sup>). In

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<sup>11</sup> See paragraph 3.24 of the ENW commitments decision.

<sup>12</sup> See Figure 1.3 and Tables 1.5 and 1.6 in Ofgem's connections industry review:

[http://webarchive.nationalarchives.gov.uk/20130303215726/http://www.ofgem.gov.uk/Networks/Connectns/ConnIndRev/Documents1/Connections%20Industry%20Review%202010-11\\_Dec%2012.pdf](http://webarchive.nationalarchives.gov.uk/20130303215726/http://www.ofgem.gov.uk/Networks/Connectns/ConnIndRev/Documents1/Connections%20Industry%20Review%202010-11_Dec%2012.pdf)

<sup>13</sup> A description of this code is available on Ofgem's website at <https://www.ofgem.gov.uk/licences-codes-and-standards/codes/electricity-codes/connection-and-use-system-code-cusc>.

<sup>14</sup> For an explanation of these charges, see <https://www.ofgem.gov.uk/electricity/transmission-networks/charging>.

addition, it may be impractical and inefficient to connect to the transmission network because of difficulties in obtaining wayleaves and land access.<sup>15</sup>

- 6.8. For these reasons, in reliance upon its analysis of the relevant product market contained in its ENW commitments decision, the Authority takes the preliminary view that there are no viable demand-side or supply-side substitutes for Non-Contestable Connection Services for new connections to SEPD's electricity distribution network, meaning that the relevant product market for the purposes of assessing dominance is likely to be the market for those Non-Contestable Connection Services.

#### *Relevant geographical market for assessing dominance*

- 6.9. Across GB, the provision of electricity distribution networks is dominated by six groups who own the networks of the 14 DSAs. SEPD's DSA covers central southern England and incorporates the counties of Berkshire, Buckinghamshire, Hampshire, Oxfordshire and Wiltshire.
- 6.10. In theory, connection to the distribution network can be substituted for a connection to a network in another geographical area. However, in practice this is not the case as the decision of most energy customers about where to locate a development is only marginally influenced (if at all) by the ownership of the local distribution network.<sup>16</sup>
- 6.11. The majority of customers wanting a cost-effective, reliable source of electricity in a given DSA have no other realistic option but to connect to the local distribution network. Where customers seek to connect to the distribution network in that DSA then, for reasons of cost and efficiency, they will choose to connect to the network closest to where they are located. Overwhelmingly, this is likely to be the distribution network that is owned and operated by the local DNO.<sup>17</sup>
- 6.12. Therefore, in terms of the geographical scope of the market for assessing dominance, the Authority takes the preliminary view that it is likely to constitute, at its broadest, the area covered by SEPD's network.

#### *Dominance*

- 6.13. Chapter II of the CA98 and Article 102 of the TFEU require an assessment of the relevant economic power or dominance of the undertaking in the relevant market.

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<sup>15</sup> See paragraph 3.25 of the ENW commitments decision.

<sup>16</sup> See paragraph 3.28 of the ENW commitments decision.

<sup>17</sup> See paragraph 3.29 of the ENW commitments decision.

- 6.14. We will generally not consider an undertaking to be dominant unless that undertaking has substantial market power. According to CMA guidelines, market power can be thought of as the ability to profitably sustain prices above competitive levels, restrict output or quality below competitive levels, weaken existing competition, and raise entry barriers or slow innovation.<sup>18</sup>
- 6.15. An undertaking is more likely to be dominant if it enjoys a high and stable market share or if its competitors enjoy relatively weak positions. During the period covered by the Authority's investigation, SEPD was the only supplier of Non-Contestable Connection Services required for new connections to its network and no other undertaking could offer those services.
- 6.16. In general, the lower the barriers to entry into a market, the more likely it is that potential competition will constrain undertakings within the market from exerting market power.<sup>19</sup> The Authority notes the conclusion reached in its ENW commitments decision that there were high barriers to entry into the market.<sup>20</sup>
- 6.17. Given that these significant barriers to entry appear likely also to exist in relation to SEPD's distribution network, it is the Authority's preliminary view that SEPD was likely to be dominant in the market for the provision of Non-Contestable Connection Services to its own connections business, IDNOs and ICPs for connections to SEPD's network.

#### *The affected market*

- 6.18. The Authority's preliminary view is that the relevant affected market appears to be the market for building or adoption and operation of newly constructed electricity networks in the SEPD DSA.

#### *Abuse*

- 6.19. The holding of a dominant position is not in itself prohibited under the CA98 or Article 102 of the TFEU. It is the abuse of a dominant position which is prohibited.
- 6.20. To establish an abuse, it is necessary to take account of whether the dominant undertaking has had recourse to methods different from those which condition normal competition and whether that conduct has the effect of weakening or distorting competition.

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<sup>18</sup> See paragraph 4.13 of the CMA's guidelines entitled "Abuse of a dominant position", available here: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/284422/oft402.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284422/oft402.pdf)

<sup>19</sup> See the same guidelines, paragraph 4.19, and OFT415 "Assessment of Market Power", which is available at <https://www.gov.uk/government/publications/assessment-of-market-power>.

<sup>20</sup> See paragraph 3.43 of the ENW commitments decision.

- 6.21. In addition, there is a “special responsibility” for dominant firms not to allow their behaviour to impair genuine undistorted competition on the market.<sup>21</sup> Conduct which may be permissible in a normal competitive situation may amount to an abuse if carried out by a dominant firm.
- 6.22. The Authority identified the following practices which gave rise to competition concerns relating to SEPD’s provision of Non-Contestable Connection Services:
- i. SEPD applied additional and/or higher costs for Non-Contestable Connections Services in its quotes to IDNOs/ICPs compared with costs for Non-Contestable Connection Services charged to its own connections business for transactions which appeared to be equivalent;
  - ii. SEPD provided quotes to IDNO’s/ICPs and to its own connections business, for transactions which appeared to be equivalent, based on different geographical POC locations which can impact upon the costs for Non-Contestable Connection Services as well as the customer’s costs; and
  - iii. SEPD applied higher connection voltages to comparable works in its quotes to IDNOs/ICPs compared with connection voltages applied to its own connections business for transactions which appeared to be equivalent.
- 6.23. The Authority considers that the practices described in paragraph 6.22 above (if engaged in without objective justification) are capable of having the effect, either individually or cumulatively, of favouring SSE’s own connections business to the detriment of the connections businesses of IDNOs and ICPs when operating in the area covered by SSE’s distribution networks. As such, the alleged practices have the potential to infringe Chapter II of the CA98 or Article 102 of the TFEU.

*Effect on trade*

- 6.24. Given the outcome of this investigation, it has not been necessary to carry out a full assessment of the effect on trade in this decision.
- 6.25. For completeness, we consider that the alleged conduct may have been capable of affecting trade within the United Kingdom.
- 6.26. We also note that the fact the alleged conduct took place in southern-central England and that SEPD provides services only in GB, does not preclude a finding that the conduct produced an appreciable effect on trade between

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<sup>21</sup> See CJEU case 322/81, *Michelin v Commission*, para. 57.



Member States of the European Union.<sup>22</sup> The provision of new connections to electricity distribution networks in the UK is open to competition and electricity connections providers from other Member States are able to compete for the provision of connection services in the UK.

- 6.27. In light of these factors (and as noted above), it is the Authority's preliminary view that the conduct in question is capable of affecting trade between Member States of the European Union and, accordingly, our investigation was conducted on the basis of a possible infringement of both Chapter II of the CA98 and Article 102 of the TFEU.

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<sup>22</sup> See the European Commission's "*Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty*" OJ [2004] C101/81, para. 22.

## 7. The commitments offered by SSE

- 7.1. The commitments offered by SSE in June 2016 consisted of four commitments that are structured with a principle at the beginning, followed by a series of specific actions. In summary, those commitments were as follows:
- i. **Commitment 1: Broad equivalence of quotations in respect of non-contestable costs, POC location and/or connection voltage.** To the maximum extent possible, SSE will ensure that quotations provided for equivalent requests for the same development are broadly equivalent in respect of costs for Non-Contestable Connection Services, POC location, and connection voltage.
  - ii. **Commitment 2: SSE's internal structure and processes to facilitate functional separation.** SSE will implement a new operating model that will support functional separation of its connections business and introduce policies and processes to support this separation. The separation of the business is designed to ensure that the provision of Non-Contestable Connection Services is not structured in a way that causes undue preference to, or unduly discriminates against, ICPs or IDNOs.
  - iii. **Commitment 3: Systems, processes and training to facilitate the delivery of a transparent cost model, automated quotation system and compliance with competition law.** SSE will revise its policies and procedures to ensure that they reflect the commitments, in particular in relation to the obligation not to cause undue preference or discrimination against ICPs or IDNOs in respect of costs for Non-Contestable Connection Services, POC location and/or connection voltage.
  - iv. **Commitment 4: Reporting and provision of information.** SSE will provide the Authority with monitoring reports demonstrating the steps it has taken to comply with the commitments, and its ongoing compliance with the commitments. SSE's compliance with the commitments will also be monitored by a third party, external auditor for the lifetime of the commitments. The commitments will be subject to review 5 years after the date they are implemented.
- 7.2. Having considered the consultation responses (see further below) the text of the commitments the Authority has accepted is set out in full in Annex 1 of this document.
- 7.3. That text includes only minor amendments from the version set out in the notice of our intention to accept binding commitments. The amendments include:

- definitions of “metered supply” and “unmetered supply” added. This is intended to clarify that unmetered supply connections are subject to the full scope of the commitments; and
- confirmation that an external auditor's conclusions into SSE's compliance with the commitments will be made publically available.

7.4. Given that the Authority does not consider the amendments to the wording of the commitments to be significant, it has not carried out a further consultation on the amended commitments.<sup>23</sup>

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<sup>23</sup> This approach is consistent with the CMA's guidance, which can be found here: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/537006/CMA8\\_CA98\\_Guidance\\_on\\_the\\_CMA\\_investigation\\_procedures.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537006/CMA8_CA98_Guidance_on_the_CMA_investigation_procedures.pdf)

## **8. Responses to the notice of the Authority's intention to accept binding commitments**

- 8.1. The Authority received five responses to its public consultation. These came from interested electricity connections stakeholders. The Authority also met with four of the five respondents to better understand the issues they had raised in response to the consultation and for the Authority to clarify the respondents' concerns. The one party that the Authority did not meet with had no substantive comments.
- 8.2. The consultation responses included comments on both the proposed commitments and on general issues relevant to the market for new electricity connections. All of the comments made in the written consultation responses are summarised below, although only the comments made in relation to the commitments are relevant to the Authority's decision on whether to accept binding commitments from SSE.
- 8.3. The Authority has not published the names of the parties that responded to the consultation. For the purpose of this document, the four respondents who provided substantive responses will be referred to as respondents A-D.
- 8.4. The Authority has considered carefully and conscientiously taken into account the comments and concerns expressed in the responses to its public consultation. The Authority's responses and its reasons for accepting the commitments with only minor amendments compared with those consulted upon are set out in section 9 below.

### Consultation responses related to accepting the proposed commitments as binding

#### *Whether the Authority should accept binding commitments*

- 8.5. Only respondent A stated that the Authority should not accept commitments from SSE.
- 8.6. Respondents A and D both expressed a concern that by accepting commitments, the Authority would not be sending out a sufficiently strong signal to deter others from participating in anti-competitive behaviour in the market for new electricity connections. Both parties suggested to the Authority that only by finding an infringement of the CA98, and imposing a subsequent financial penalty, would an appropriate deterrent effect be produced for the rest of the market.
- 8.7. Respondent A also pointed to past instances where the Authority had accepted commitments from DNOs in relation to other DSAs and where it considered competition issues remained despite the commitments. The

respondent pointed to the *SP Manweb*<sup>24</sup> commitments decision and the ENW commitments decision and considered that these decisions had not acted as a sufficient deterrent to the rest of the market and had not improved competition or prevented similar, potentially anti-competitive, behaviour to that which had been investigated.

- 8.8. Respondents A and B expressed the view that, if the Authority were to accept binding commitments, SSE should pay a form of compensation to customers affected by the competition concerns identified, or should be deprived of any profit it made during the period covered by the investigation. Both respondents noted the 1999 investigation into Transco by Ofgas that resulted in Transco volunteering to refund customers.<sup>25</sup> Respondent A also pointed to the 2012 Authority investigation into Electricity North West as an example of financial recompense being included in the terms of the commitments accepted by the Authority.
- 8.9. Respondent B agreed with the competition concerns identified by the Authority and was supportive of the proposal for the Authority to accept commitments.

*Whether the commitments address the competition concerns*

- 8.10. Respondent C was the only respondent to suggest that the commitments did not address the competition concerns. Respondent C expressed dissatisfaction with the proposed scope of competition training in the commitments. It suggested that a culture exists within SSE that is not conducive to competition and that this could only be resolved if competition training was undertaken by all SSE staff.

*Concerns with the content of the proposed commitments*

- 8.11. All four respondents raised concerns with the content of the commitments in some form.
- 8.12. Respondents A and B both raised a similar point, asking that the business processes described in the commitments should be accredited under a quality management system standard, namely ISO9001.<sup>26</sup> Both parties told the Authority that this accreditation would provide reassurance to the industry, in particular to SSE's competitors for new connections work in its distribution areas, that the processes proposed under the commitments are robust, will be adhered to and will be independently audited.

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<sup>24</sup> <https://www.ofgem.gov.uk/ofgem-publications/37644/55.pdf>

<sup>25</sup> <https://www.ofgem.gov.uk/ofgem-publications/79341/investigations-transcos-connections-31-01.pdf>

<sup>26</sup> ISO9001 is a standard that sets out criteria for a quality management system. For more information, see [http://www.iso.org/iso/iso\\_9000](http://www.iso.org/iso/iso_9000)

- 8.13. Respondent B stated that it wanted assurance that the proposed functional separation and associated changes to SSE's IT systems under the commitments would be monitored in order to ensure that they had the desired impact upon competition. The respondent expressed a concern that the changes would act as a barrier to competition by increasing the time taken by SSE to issue quotations for Non-Contestable Connection Services to customers. Respondent B cited a previous commitments case in which an IT system designed to prevent discrimination against competitors was included in commitments accepted by the Authority. As a result of these changes, parties experienced delays in quotations which they felt constituted a further barrier to competition.
- 8.14. Respondent C raised the point that the exclusion of "Minor Connections" from the commitments could be interpreted as including LV unmetered connections. It advised that it saw no reason for LV connections to be excluded from the full range of the commitments.

#### Consultation responses related to sector-wide issues

- 8.15. Respondent B expressed a wish to see a change in regulation so that all competitors can determine the POC and assess the costs for Non-Contestable Connection Services associated with a project, without having to rely upon the DNO to do this.
- 8.16. Respondent D raised a concern about the use of "letters of authority" by which DNOs require a letter from the end customer confirming that they have asked the ICP or IDNO for a quotation. It argued that the requirement by DNOs to have competitors provide such letters of authority is intended purely as a barrier to competition, allowing the DNO to delay issuing a quote to a competitor.
- 8.17. Respondents A and D both raised concerns that SSE can compete and provide new electricity connections outside of its own distribution area. Respondent D asked the Authority to prevent SSE from competing outside of its distribution areas until such a time as its competitors are comfortable that the commitments have been implemented correctly. Respondent D reiterated this point in a follow-up letter to the Authority. Respondent A expressed a view that, when competing outside its distribution areas, SSE has an unfair advantage.

## **9. The Authority's response to the comments raised in the consultation responses and its reasons for accepting the commitments as consulted upon**

- 9.1. This section sets out the Authority's response to the specific comments and concerns raised in the responses to the consultation. It also contains an explanation as to why the Authority has decided to accept the commitments as consulted upon without material amendment.

### *Whether the Authority should accept binding commitments*

- 9.2. The Authority takes its powers to deal with anti-competitive behaviour under the CA98 seriously. The Authority has also stated the importance of competition in the market for new connections to the electricity distribution network and has taken considerable steps to help facilitate further competition.<sup>27</sup>
- 9.3. The Authority does not consider that accepting commitments will undermine deterrence in this market. The Authority considers that the investigation itself has served to create a deterrent effect across the industry and the content of the commitments should serve to send a signal to the industry on appropriate standards for the provision of Non-Contestable Connection Services. Industry feedback also suggests that the investigation has already led to a wider awareness of competition and compliance issues in the market. The Authority considers that the acceptance of commitments will promote the importance of compliance with competition law and may deter anti-competitive conduct across the energy sector.
- 9.4. The Authority has taken no decision on whether SSE has infringed the CA98 and it is important to note that a full investigation may not lead to a conclusion that the CA98 has been infringed.
- 9.5. The Authority does not consider it appropriate for SSE to be obliged to pay compensation as part of these commitments. The payment of compensation would not address any of the competition concerns identified by the Authority, so the Authority does not consider that it is appropriate for such an obligation to be provided for in these commitments.
- 9.6. The Authority also notes that it has no power to impose any form of financial penalty as part of the process for accepting commitments. Such action would only be possible if the Authority proceeded with its investigation and ultimately found an infringement of the CA98.

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<sup>27</sup> The Authority's 2014 review of competition in the electricity distribution market and the subsequent introduction of the Competition in Connections Code of Practice and associated electricity distribution licence condition are evidence of the steps taken with the objective of improving competition in the electricity connections market.

9.7. Notwithstanding the concerns raised by industry participants about the effectiveness of commitments, the Authority considers that the binding commitments accepted in past investigations and mentioned by respondents to the consultation were appropriate in the specific circumstances of those cases and the commitments addressed the competition concerns that had been identified. They have also helped to raise awareness of and promote compliance with competition law. Further, the Authority treats all investigations on a case-by-case basis and it considers that, in the circumstances of the present case, it is appropriate to accept commitments. In coming to this decision, the Authority has had regard to recent changes in the regulatory framework applicable to new connections to the electricity distribution networks (see paragraphs 9.15 to 9.18 below).

*Whether the commitments address the competition concerns identified*

- 9.8. Only Respondent C raised concerns that the commitments proposed by SSE, if implemented, would not fully address the competition concerns identified. The Authority considered the points raised by the representation and the Authority is satisfied that the commitments address the specific competition concerns identified in its investigation.
- 9.9. The commitments require all staff (including senior managers) directly involved with the provision of connection services to receive mandatory, up-to-date training of an appropriate quality and standard on compliance with competition rules applicable to the connections market. The training must specifically outline and explain the competition concerns identified by the Authority during this investigation and it must explain the content of the commitments. The training will be given to new joiners and to all current connections staff, and it will be repeated for those employees every year.
- 9.10. The Authority is satisfied that the scope and detail of the competition training provided for in the commitments is proportionate to the competition concerns identified in the investigation.

*Concerns with the content of the proposed commitments*

- 9.11. The Authority discussed with SSE the implementation of a quality management system standard and SSE advised the Authority that it, and those of its subsidiaries falling within the scope of the commitments, already hold an ISO9001 accreditation and provided evidence. As such, any process changes implemented as a result of the commitments will need to comply with the ISO9001 standard. As SSE already holds this accreditation, and will continue to do so until at least September 2018, the Authority does not deem it appropriate to add a quality management system standard accreditation as a requirement of the commitments.



- 9.12. SSE has given a written assurance to the Authority that the functional separation of its connections services, and associated IT systems that will facilitate this separation, will be designed to provide as much information to all parties involved in the connections quotation process as possible and in turn equalise the amount of information available to all parties. Furthermore, the functional separation and associated IT system will not be used as, and will not function as, a barrier to competition by introducing delays in the provision of quotations. The Authority is satisfied with this written assurance and will hold SSE to account should the functional separation lead to delays.
- 9.13. The commitments also provide for ongoing, independent third-party monitoring of the implementation of the commitments and SSE's ongoing compliance with the commitments. The Authority is satisfied that this level of ongoing monitoring will provide sufficient assurance to it and to the industry that any changes made as a result of the implementation of the commitments will promote and not harm competition. In particular, this independent third-party monitoring and the Authority's ongoing engagement with industry participants as a sectoral regulator will provide opportunities for the auditor and other parties to raise concerns about delays in the provision of quotations for Non-Contestable Connections Services.
- 9.14. In response to a point raised in a representation to our consultation, SSE has clarified that LV unmetered connections will be subject to the full range of the commitments and will not fall within the special rules in the commitments for minor connections. The drafting of the commitments has been amended from that published with the consultation to reflect this clarification.

#### Response to sector-wide issues raised in the consultation

- 9.15. The Authority understands that issues raised in this investigation may also be relevant to the practices of other DNOs (e.g. the determination of the POC by ICPs and the use of letters of authority). The Authority decided to open this case because the evidence provided from a market review gave it reasonable grounds for suspecting an infringement of the CA98. It also recognised the significance of the suspected behaviour to the development of competition for new connections to electricity distribution networks and the potential deterrence benefits to the wider sector of opening the investigation.
- 9.16. Whilst opening the investigation may have resulted in benefits to the wider market, the scope of the investigation was limited to consideration of SSE's behaviour in the market for connections in its distribution areas. In recent years, the Authority has been closely engaged with industry stakeholders with the objective of promoting competition in the new electricity

connections market. The 2014 review of competition in electricity connections and the resulting Competition in Connections Code of Practice<sup>28</sup>, and associated licence condition, were designed to promote competition in this specific market and to provide a self-serving framework for the industry to promote competition with oversight from the Authority.

- 9.17. With regard to SSE competing and providing electricity connections outside of its DSAs, as the holder of electricity distribution licences, SSE is able to build, own and operate electricity distribution assets across Great Britain. This includes areas outside of its DSAs. The Authority's competition concerns relate to SSE's position as sole provider of Non-Contestable Connection Services required for new connections within SSE's DSAs. The relevant geographical scope of the market is, at its broadest, the area covered by SSE's networks. Our competition concerns do not extend to SSE operating "out of area" and we therefore do not intend to address this point as part of the commitments, other than to say that the Authority does not consider that restricting SSE's ability to compete for new connections outside of its DSAs in this way would address any of the Authority's competition concerns. In any event, such a step might have a negative impact on competition for such connections and, therefore, would not be an appropriate course of action.
- 9.18. The Competition in Connections Code of Practice governs the way in which DNOs provide services to ICPs and IDNOs to help facilitate competition in the electricity distribution connections market. If stakeholders have concerns about the extent to which competitors depend on DNOs for essential services, or how DNOs manage their relationship with competitors, we would encourage them to consider raising a modification to the Competition in Connections Code of Practice.<sup>29</sup> The Authority notes that, earlier this year, it approved modifications to the Competition in Connections Code of Practice that introduced clear, common processes for the self-determination of POCs by IDNOs and ICPs.<sup>30</sup> The Authority will continue to consider using its range of CA98 and sectoral powers to address issues such as those identified in this investigation where it has reasonable grounds for suspecting breaches of relevant obligations.

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<sup>28</sup> See [www.connectionscode.org.uk](http://www.connectionscode.org.uk).

<sup>29</sup> <http://www.connectionscode.org.uk/modification-process.html>

<sup>30</sup> <https://www.ofgem.gov.uk/publications-and-updates/competition-connections-code-practice-modification-0001-self-determination-point-connection-independent-connection-providers>

## 10. Conclusion

- 10.1. The Authority has carefully considered the responses received to its consultation on its proposal to accept SSE's commitments, in light of the CMA's guidance.<sup>31</sup> As a result, it is satisfied that accepting commitments is the most appropriate approach in this particular case. This is because the competition concerns are readily identifiable and the commitments offered by SSE:
- fully address the competition concerns identified;
  - are capable of being implemented effectively and within a short period of time; and
  - will not undermine deterrence.
- 10.2. The Authority considers that neither compliance with nor the effectiveness of the commitments will be difficult to discern. The Authority also considers that accepting the commitments is the timeliest and most appropriate use of its resources as a means of addressing the competition concerns it has identified during the course of its investigation.
- 10.3. Accepting the commitments is likely to promote awareness, and the importance, of competition law in all types of markets. The breadth and relatively quick implementation of the commitments also mean that they are likely to have a greater and earlier benefit to IDNOs, ICPs, developers and energy consumers than might otherwise have been achieved by pursuing a full investigation.
- 10.4. The Authority therefore accepts the commitments set out in Annex 1 of this document. The commitments will be binding and enforceable under section 31E of the CA98. Accordingly, the Authority is closing its investigation in this case.
- 10.5. The CMA's guidance on commitments<sup>32</sup> advises that significant changes to the commitments would require the Authority to allow interested parties an opportunity to comment on the changes. The Authority does not consider the amendments to the wording of the commitments to be significant and, therefore, it has not carried out a further consultation on the amended commitments.

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<sup>31</sup> See "Competition Act 1998: Guidance on the CMA's investigation procedures in Competition Act 1998" (CMA8) and "*Enforcement*" (OFT407, which has been adopted by the CMA Board).

<sup>32</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/537006/CMA8\\_CA98\\_Guidance\\_on\\_the\\_CMA\\_investigation\\_procedures.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537006/CMA8_CA98_Guidance_on_the_CMA_investigation_procedures.pdf)

10.6. Acceptance of the commitments means that the Authority is now closing its investigation with no decision made on whether or not SSE infringed Chapter II of the CA98 and/or Article 102 of the TFEU.

## Annex 1

### COMMITMENTS GIVEN BY SSE PLC PURSUANT TO SECTION 31A OF THE COMPETITION ACT 1998

SSE plc gives to the Gas and Electricity Markets Authority (**GEMA**), without in any way acknowledging or accepting that it has infringed applicable competition law, the following commitments (the **Commitments**) under section 31A(2) of the Competition Act 1998 in order to meet GEMA's concerns as set out *inter alia* in GEMA's Statement of Competition Concerns dated 25 April 2016 and in its notice of its intention to accept binding commitments dated 22 June 2016.

#### INTERPRETATION

The Interpretation Act 1978 shall apply to these Commitments as it does to Acts of Parliament.

In these Commitments the word "***including***" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "***include***" and its derivatives shall be construed accordingly.

For the purpose of these Commitments, the following terms shall have the meaning ascribed to them below.

- (a) **All Works Quotation** means a Quotation provided to a Developer which encompasses both Contestable Connection Services and Non-Contestable Connection Services.
- (b) **Broad Equivalence or Broadly Equivalent** means equivalence to the maximum extent possible when taking into account all relevant circumstances including timing, connection type and technical specifications.
- (c) **Charging Methodology** means the Statement of Methodology and Charges for Connection to SEPD's and SHEPD's Distribution Networks (last amended on 26 April 2016).
- (d) **Code of Practice** means the Competition in Connections Code of Practice produced in accordance with condition 52 of the Licence.
- (e) **Connection** means a physical connection to SEPD's or SHEPD's Distribution Network for both Metered and Unmetered supply.
- (f) **Connection Services** means Contestable Connection Services and Non-Contestable Connection Services.
- (g) **Connection Voltage** means level of voltage of the POC required to connect the development, i.e., either low voltage (LV), high voltage (HV) or extra high voltage (EHV).
- (h) **Contestable Connection Services** means those services which are necessary for the provision of a Connection and, in accordance with the Licence, can be provided by the licensee or by an ICP or an IDNO.

- (i) **Contestable Connections Team** means those staff responsible for undertaking the Contestable Connection Services component of Quotations, as further described in Commitment 2.
- (j) **Developer** means the person or company responsible for the construction development which requires connection to the relevant Distribution Network, including its agents.
- (k) **Distribution Network** means an electricity distribution system (within the meaning of section 4(4) of the Electricity Act 1989).
- (l) **DNO** means Distribution Network Operator (within the meaning of sections 6(1)(c) and (9) of the Electricity Act 1989).
- (m) **Holding Company** shall be understood as defined in section 1159 of the Companies Act 2006.
- (n) **ICP** means an accredited independent connections provider registered with the Lloyd's Register, including its agents.
- (o) **IDNO** means an Independent Distribution Network Operator licensed by GEMA, including its agents.
- (p) **Implementation Date** means 6 months after acceptance of the Commitments by GEMA.
- (q) **Licence** means the electricity distribution licences issued by GEMA to SEPD and/or SHEPD under section 6(1)(c) of the Electricity Act 1989, in particular the standard conditions of the electricity distribution licence last amended on 30 October 2015.
- (r) **Metered supply** means a supply of electricity to premises measured by an electricity meter for the purposes of calculating the charges for that supply.
- (s) **Minor Connections** means single LV service demand connections and small project demand connections as defined in Regulation 2 of the Electricity (Connection Standards of Performance) Regulations 2015.
- (t) **Non-Contestable Connection Services** means those services which are necessary for the provision of a Connection and, in accordance with the Licence, cannot be provided by a person other than the licensee, as listed in paragraph 15.2 of Condition 15 of the standard conditions of the Licence.
- (u) **Non-Contestable Connections Team** means those staff responsible for undertaking the Non-Contestable Connection Services component of Quotations, as further described in Commitment 2.
- (v) **Non-Contestable Costs** means charges for Non-Contestable Connection Services in All Works Quotations or POC Quotations as identified in Appendix 1.
- (w) **POC** means a point of connection to SEPD's or SHEPD's Distribution Network.
- (x) **POC Location** means the physical location of the POC to SEPD's or SHEPD's Distribution Network.
- (y) **POC Quotation** means a Quotation provided to a Developer, an ICP or an IDNO

which only encompasses Non-Contestable Connection Services.

- (z) **Provisional Request** means a request for Connection Services which does not meet the requirements of section 16A of the Electricity Act 1989 (as detailed by standard conditions 15 and 15A of the Licence), or a request for a budget estimate or a feasibility study.
- (aa) **Quotation** means information provided by SEPD and/or SHEPD in writing, following a Request for Quotation, and includes information relating to the POC, a statement of the charges that will apply in accordance with the Licence and the Charging Methodology, and any other information reasonably requested by the applicant. For the avoidance of doubt, the term Quotation includes All Works Quotations and POC Quotations.
- (bb) **Relevant Legislation** includes the Competition Act 1998 and the Electricity Act 1989.
- (cc) **Relevant Subsidiary** means any Subsidiary of SSE that is active in the provision of Quotations.
- (dd) **Request for Quotation** means an enquiry from a Developer, an ICP or an IDNO addressed to SEPD and/or SHEPD which meets the requirements of section 16A of the Electricity Act 1989 (as detailed by Conditions 15 and 15A of the standard conditions of the Licence). For the avoidance of doubt, this does not include Provisional Requests.
- (ee) **Review** means GEMA considering whether there are changes of circumstances relevant to these Commitments such that they should be released or varied to remove aspects of the Commitments that GEMA no longer considers necessary or appropriate.
- (ff) **SEPD** means Southern Electric Power Distribution plc and any Subsidiary of SSE which succeeds Southern Electric Power Distribution Plc as the Licence holder.
- (gg) **SHEPD** means Scottish Hydro Electric Power Distribution plc and any Subsidiary of SSE which succeeds Scottish Hydro Electric Power Distribution Plc as the Licence holder.
- (hh) **Spot Check** means a visit by the external independent auditor provided for in these Commitments to an SEPD or SHEPD site where Connection Services are provided for the purpose specified in Commitment 4, paragraph (d) of these Commitments. To conduct the Spot Check, the auditor will:
  - with the exception of Minor Connections, request and review a report prepared by SSEPD which lists Quotations which have been given where differences in Non-Contestable Costs, POC Location and/or Connection Voltage have been identified between the Non-Contestable Connection Services element of any All Works Quotations and any POC Quotations for the same development. The report should include all such Quotations issued since the date of the last Spot Check or annual report of the auditor (whichever is more recent);

- with the exception of Minor Connections, review a sample, but no less than 1% of such Quotations in order to (i) determine whether the reasons for those differences have been recorded properly and in such a way that the auditor understands the basis for them; and (ii) assess whether the differences are justified; and
  - in respect of Minor Connections, request and review a report prepared by SSEPD, in order to determine SSE's compliance with the Commitments as detailed in Commitment 2, paragraph (c).
- (ii) **SSE** means SSE plc. For the avoidance of doubt, all obligations incumbent upon SSE in these Commitments are deemed to also bind SSEPD, SEPD and SHEPD. SSE shall procure that each Relevant Subsidiary shall comply, at all times, with the Commitments.
- (jj) **SSEPD** means Scottish and Southern Energy Power Distribution Limited, the Holding Company of SEPD and SHEPD and any Subsidiary of SSE as successor Holding Company of SEPD and/or SHEPD.
- (kk) **Subsidiary** shall be understood as defined in section 1159 of the Companies Act 2006.
- (ll) **Unmetered supply** means a supply of electricity to premises that is not being measured by an electricity meter for the purposes of calculating the charges for that supply.

#### **COMMENCEMENT AND DURATION**

Having been signed by SSE, these Commitments shall take effect from the Implementation Date and will be subject to Review following a period of 5 years after the Implementation Date.

Nothing in this provision will prevent SSE from requesting an amendment to, or early termination of, the Commitments (or requesting new commitments to substitute for the Commitments) at any point in time in light of, for example, changed market circumstances or legislative requirements.

Both GEMA and SSE recognise that changes planned or under way within the electricity connections sector may have relevance to the Commitments, in particular with regards to the implementation of the Code of Practice for DNOs. As and when appropriate, SSE and GEMA will meet to discuss whether the Commitments should be amended, terminated or replaced by new commitments in light of such sector changes.

#### **RELATIONSHIP BETWEEN THE LICENCE AND THE COMMITMENTS**

The specific actions contained within the Commitments supplement and are in addition to the obligations contained within the Licence and the Electricity Act 1989 and are intended to address the competition concerns raised.



**COMMITMENT 1: BROAD EQUIVALENCE OF QUOTATIONS WITH RESPECT TO NON-CONTESTABLE COSTS, POC LOCATION AND/OR CONNECTION VOLTAGE**

***Principle***

Without prejudice to its obligations under the Licence and Electricity Act 1989, SSE will take the following actions to ensure a broad equivalence of Quotations with respect to Non-Contestable Costs, POC Location and Connection Voltage.

***Specific actions***

In particular, and in order to facilitate that broad equivalence of Quotations, SSE will:

- (a) ensure that All Works Quotations and POC Quotations provided in response to equivalent Requests for Quotation for the same development are broadly equivalent in respect of each of:
  - i. Non-Contestable Costs;
  - ii. POC Location; and
  - iii. Connection Voltage,to the maximum extent possible taking into account all relevant circumstances including timing, connection type and technical specifications concerned; and
- (b) fully implement the provisions of Commitments 2, 3 and 4.

**COMMITMENT 2: SSE'S INTERNAL STRUCTURE AND PROCESSES TO FACILITATE FUNCTIONAL SEPARATION**

***Principle***

Without prejudice to its obligations under the Licence and Electricity Act 1989, SSE will implement a new operating model based on functional separation and the introduction of policies and processes to support this. These are designed to further ensure that the provision of Non-Contestable Connection Services is not structured in such a way that causes undue preference to, or unduly discriminates against, ICPs or IDNOs, with respect to Non-Contestable Costs, POC Location and Connection Voltage.

***Specific actions***

In particular and in order to facilitate the implementation of a new operating model based on functional separation, SSE will:

- (a) adopt a new internal operational structure (diagram included in Appendix 2 for illustrative purposes only), which provides for two distinct and separately staffed functions, namely the Non-Contestable Connections Team and the Contestable Connections Team. These functions will have the following roles and responsibilities:
  - i. the Contestable Connections Team will operate as the main interface with Developers and/or their agents in relation to All Works Quotations;
  - ii. the Contestable Connections Team will respond to Requests for Quotation

from Developers in accordance with the timescales and standards set out in the Licence, SSE's public policies and procedures and in these Commitments;

- iii. in order to respond to Requests for Quotation, the Contestable Connections Team will engage with the Non-Contestable Connections Team in relation to Non-Contestable Connection Services;
  - iv. the Non-Contestable Connections Team will operate as the main interface with the Contestable Connections Team and with ICPs or IDNOs in relation to Non-Contestable Connection Services;
  - v. the Non-Contestable Connections Team will be responsible for assessing the capacity of the network, identifying the infrastructure requirements for the proposed development, calculating the Non-Contestable Costs to be charged, selecting the POC Location to be proposed and deciding on the appropriate Connection Voltage to be offered in circumstances where these services are being delivered by SEPD or SHEPD;
  - vi. where necessary, the Non-Contestable Connections Team will interact with, and request services and obtain information from, other departments within SSE;
  - vii. the Non-Contestable Connections Team will respond to Requests for Quotation in respect of Non-Contestable Connection Services, regardless of whether those requests come from the Contestable Connections Team or from ICPs or IDNOs, in accordance with the timescales and standards set out in the Licence, SSE's public policies and procedures and in these Commitments; and
  - viii. the internal procedures relating to the activities of the Non-Contestable Connections Team and the Contestable Connections Team will reflect the timescales and standards set out in the Licence, SSE's public policies and procedures and in these Commitments.
- (b) amend and update its external and internal policies, procedures and associated documents and forms to reflect the revised structure and in a way which is consistent with the principles set out in (a) above.

This new operating model based on functional separation (together with the processes outlined in Commitment 3 below) will not apply to Minor Connections. However, for the avoidance of doubt, SSE will:-

- (c) adopt specific policies and procedures for Minor Connections to ensure that the Contestable Connections Team providing any Minor Connection Quotation will have no more relevant information regarding SEPD's or SHEPD's Distribution Network than the information made available to any ICP or IDNO. These policies and procedures will provide for the following process (diagram included in Appendix 3 for illustrative purposes only):
- (i) the Contestable Connections Team will not have access to any relevant network information in addition to that which is publicly available to all ICPs and IDNOs to determine the POC and Non-Contestable Connection Services;
  - (ii) any network information required that is not in the public domain, will be

provided by the Non-Contestable Connections Team to the Contestable Connections Teams, ICPs and IDNOs on a broadly equivalent basis;

- (iii) the Contestable Connections Team will undertake Non-Contestable Connection Services and Contestable Connection Services and issue the Quotation to the customer; and
- (iv) for the avoidance of doubt, in relation to Minor Connections, the obligations set out in Commitment 4 shall apply to the process as detailed in sub-paragraphs (i), (ii) and (iii) of this paragraph (c).

**COMMITMENT 3: SYSTEMS, PROCESSES AND TRAINING TO FACILITATE THE DELIVERY OF A TRANSPARENT COST MODEL, AUTOMATED QUOTATION SYSTEM AND COMPLIANCE WITH COMPETITION LAW**

***Principle***

SSE will revise its external and internal policies and procedures in the context of Connection Services to ensure that they reflect the Commitments, in particular the obligation not to cause undue preference to or undue discrimination against ICPs or IDNOs in respect of Non-Contestable Costs, POC Location and/or Connection Voltage, and are compliant with the obligations contained in Relevant Legislation and the Licence.

***Specific actions***

In particular, SSE will:

- (a) amend and update its external and internal policy documents and relevant forms to reflect the Commitments;
- (b) review the existing external and internal policy documents relating to the provision of Non-Contestable Connection Services in order to produce materials and procedures which are designed to:
  - i. ensure equivalent treatment of broadly equivalent Requests for Quotation with respect to Non-Contestable Costs, POC Location and/or Connection Voltage;
  - ii. ensure that there is no undue preference to or undue discrimination against ICPs or IDNOs with respect to Non-Contestable Costs, POC Location and/or Connection Voltage; and
  - iii. remain compliant with Relevant Legislation and the Licence.
- (c) record any differences between the Non-Contestable Connection Services element of All Works Quotations and POC Quotations for the same development, in relation to Non-Contestable Costs, POC Location and/or Connection Voltage, and the reasons for such differences in such a way that the external audit firm provided for in Commitment 4 is satisfied that it is able to understand those reasons;
- (d) ensure that the cost information provided by SSE allows Developers to compare the Non-Contestable Connection Services element of any All Works Quotations and

the POC Quotations for the same development. To achieve this, SSE will:

- i. ensure that Quotation documents are clear and easily understood and allow the Non-Contestable Connection Services element of the All Works Quotations and POC Quotations for the same development to be compared through the provision of equivalent information in each one; and
  - ii. within 10 working days of any request, provide sufficient information to Developers, ICPs or IDNOs to explain any differences between the cost of the Non-Contestable Connection Services element of any Quotations for the same development, to the extent this does not include information confidential to SSE or third parties.
- (e) create a quotation system for Connection Services with enhanced automation, to ensure each Quotation is designed with the following features:
- i. Improved IT system which will identify any differences and will prevent the issuing of a Quotation until such time as the designer in the Non-Contestable Connections Team records the reasons for the differences between Quotations for the same development;
  - ii. Improved auditability and clear processes for the capture and retention of information;
  - iii. Increased accuracy and automation of site matching within a geographical area;
  - iv. Ensuring separation of design and cost elements between designs for Contestable Connection Services and Non-Contestable Connection Services to drive consistency; and
  - v. Automated quote archiving, access/reporting and document templates.
- (f) create and deliver competition law training of an appropriate quality and standard. That training will be specifically targeted at compliance with competition rules applicable to Connection Services and will specifically outline and explain Ofgem's competition concerns and the content of these Commitments. The training will be mandatory for all staff (including senior managers) directly involved in the provision of Connection Services. In particular, SSE will deliver:
- i. mandatory training through the SSE group e-learning platform on competition law, the content of these Commitments, and compliance with them, for new joiners to teams involved in the provision of Connection Services within 4 weeks from the start of employment and mandatory training specifically targeted at competition rules applicable to Connection Services within six months of start of employment;
  - ii. notwithstanding the Implementation Date, mandatory training of staff currently involved in the provision of Connection Services within two months of acceptance of Commitments by GEMA; and
  - iii. mandatory annual refresher training for staff involved in the provision of Connection Services.

SSE will ensure that such training is kept up-to-date.

#### **COMMITMENT 4: REPORTING AND PROVISION OF INFORMATION**

On SSE's behalf, SSEPD shall:

- (a) provide written monitoring reports to GEMA:
  - i. demonstrating the steps it has taken in complying with the Commitments; and
  - ii. providing assurance of its ongoing compliance with the Commitments;

The first of these monitoring reports will be provided on the day after the Implementation Date (confirming that all measures necessary to comply with the Commitments are fully in place). The second report will be provided 6 months after the Implementation Date with a subsequent report provided one year following the Implementation Date and then on an annual basis until such a time as GEMA agrees this reporting frequency can be reduced or the reporting requirements contained in these Commitments removed;

- (b) provide GEMA with any supporting information and documents which GEMA reasonably requests in relation to, or in connection with, the Commitments (including, for example, the implementation of and/or compliance with these Commitments). Such requests for information and documents will include a reasonable time limit for production and SSE will take all reasonable steps to meet those deadlines;
- (c) ensure independent, third party assurance and audit of SSE's compliance with the Commitments by an external audit firm approved by GEMA and appointed by SSE prior to the Implementation Date. That assurance will be reported to the Board of SSEPD and those reports will also be annexed to the reports provided to GEMA. A summary of the auditor's conclusions will be included in SSE's compliance reports which are publicly available on SSE's website;
- (d) the external audit firm will, subject to providing SSE with at least two weeks' notice in writing, undertake Spot Check procedures to satisfy itself that SSE is complying with the Commitments and, if required, make recommendations to SSE. These Spot Checks will be undertaken on two occasions annually following the first anniversary of the Implementation Date until such time as GEMA agrees the reporting frequency under (a) above can be reduced or the reporting requirements contained in these Commitments removed; and
- (e) designate a member of its Senior Management Team, who is an employee of SSE and is a member of the Board of Directors of SSEPD, as the commitments compliance officer, who will have general responsibility for: ensuring compliance with the Commitments; preparing the monitoring reports; and reporting the monitoring reports to the Board of SSE such that the reports have the Board's assurance before their submission to GEMA.

## APPENDIX 1

### NON-CONTESTABLE COSTS

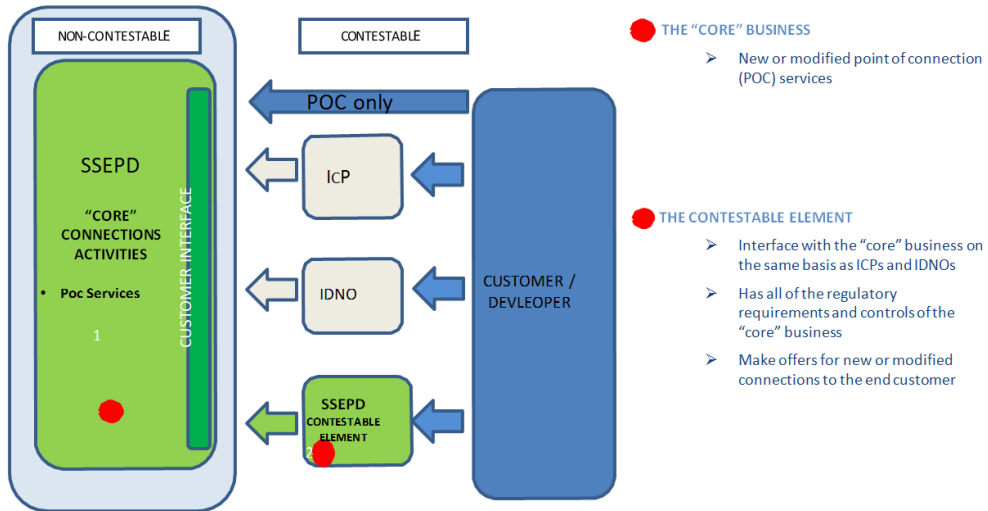
The Non-Contestable Costs are those identified in the table below:

Name of charge	Brief explanation
Assessment and design	Charges associated with the identification of the most appropriate point on the existing distribution system for connection and the design of any extension assets and/or reinforcement.
Final connection to the network	Charges associated with carrying out the final connection on to the existing distribution system.
Design approval	Charges associated with the approval of an extension asset design produced by an ICP or IDNO.
Inspection/monitoring	Charges associated with inspecting and monitoring the construction of the extension asset by an ICP or IDNO.
Wayleaves/easement	Charges associated with the administration of wayleave documentation.
Reinforcement costs	Costs associated with assets installed that add capacity to the existing shared use distribution system
Costs under Electricity Connection Charges Regulations	Costs due as required under the Electricity (Connection Charges) Regulations 2002 (SI 2002/93) as amended from time to time.
Operation and maintenance charges	Charges associated with the operation, repair, maintenance and replacement of assets.

The names used herein are accurate at the time that these Commitments were entered into. The names of the Non-Contestable Costs, and the explanatory comments, may change from time to time.

## APPENDIX 2

### NEW OPERATIONAL STRUCTURE FOR SEPD'S CONNECTIONS SERVICES FUNCTIONS



### APPENDIX 3

#### POLICIES AND PROCEDURES FOR MINOR CONNECTIONS

