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Commission clears Irish Synergen venture between ESB and Statoil following strict commitments

The European Commission has decided to clear the joint venture agreements between Ireland's dominant electricity company ESB and the Norwegian gas company Statoil relating to the Synergen power plant in Dublin. The clearance is subject to compliance with the commitments given to the Irish Commission for Electricity Regulation (CER), in particular to put 600 MW of electricity at the disposal of the market until additional sources of electricity become available in Ireland. This corresponds to approximately half of the consumption by the so-called eligible customers in Ireland, i.e. the customers that currently have the right to choose their electricity supplier.

Commenting on the decision, Mr Monti said: "The Irish electricity market is still dominated by ESB and the agreements effectively remove an important potential competitor. This case is a good example of what competition policy can do for energy liberalisation and shows the excellent cooperation of the European Commission with national regulators, in particular the Irish regulator CER, which negotiated the settlement and has agreed to monitor the commitments."

In July 2000 ESB and Statoil notified four agreements, which relate to the construction and operation of the Synergen power plant – a 400 MW gas fired plant in Dublin, Ireland. According to the "Partnership Deed" setting up the Synergen joint venture ESB holds a 70 % stake in the company while Statoil holds the remaining 30 %. Another agreement, the "Supply Agreement", foresees that a subsidiary of ESB, namely ESB Independent Energy Limited (ESBIE), markets the power generated by Synergen for 15 years. A "Gas Supply Agreement" provides that Statoil supplies Synergen with gas for 15 years. Finally the "Operation and Maintenance Agreement" stipulates that ESB provides the operation and maintenance services to Synergen for 15 years.

The case concerns primarily the Irish market for "electricity production and sales to wholesalers" and the Irish market for "electricity sales to eligible customers". Eligible customers are those having the right to switch their supplier. Currently the eligible customer market corresponds to 40% of the total electricity consumption in Ireland, comprising in particular industrial and commercial users. It is expected that full market opening will be achieved by 2005.

The Commission analysed in particular whether the creation of the joint venture removes Statoil as a potential competitor from the highly concentrated Irish power market. Statoil is a powerful company with gas reserves inside and outside of Ireland, electricity activities in other countries, a well established brand name in Ireland and financial strength.

For the two markets concerned the Commission established that ESB still holds a dominant position. ESB controls effectively 97% of the electricity production in Ireland and more than 60% of the supply market for eligible customers. Whilst the market structure will be somewhat improved later this year, when Viridian, the Northern Irish electricity company commissions its new 340 MW power plant at Huntstown (Ireland), the Commission took the view that Viridian might not develop into ESB's fiercest competitor. This is due to the fact that ESB and Viridian, are both active in Northern Ireland and the Republic of Ireland creating a certain equilibrium of potential competitive threats.

Under these circumstances, the Commission came to the conclusion that the market structure would be improved on a lasting basis only if a third power producer – independent of ESB and Viridian – entered the Irish electricity markets. In this respect the Commission noted that Statoil was one of few, if not the most prominent, potential new entrant. But the joint venture agreement prevents Statoil from participating in competing power projects or from entering the market independently.

In the course of the investigation, the companies proposed to address the Commission's concerns. The settlement negotiations were carried out by the Irish Commission for Electricity Regulation (CER) at the Commission's request. The main elements of the commitments submitted by ESB and Synergen are:

Volumes: ESB and Synergen make available 600 MW of electricity per year until additional sources of electricity of 400 MW become available, of which 300 MW must be produced by a single new plant.

Origin of the volumes: Of the 600 MW, ESB will provide 400 MW and Synergen will provide 200 MW.

Sales Modus: The volumes provided by ESB will be sold under an auction system (so called VIPP scheme). The Synergen volumes can be sold on the basis of bilateral contracts and if this fails by means of an auction. ESB companies are excluded from the Synergen sales.

Maximum volumes: No electricity supplier can acquire more than 400 MW in the ESB auction (VIPP) including its own production and purchases from Synergen. This means for ESBIE that it can buy maximum 200 MW in the auction as it acquires already 200 MW from Synergen.

Type of contracts: The electricity sold by Synergen is made available by means of contracts running up to three years.

Non-compete obligation: The obligation imposed on Statoil not to participate in competing power projects is deleted.

The European Commission takes the view that the commitments will facilitate market entry in the Irish electricity markets. Once Viridian's power plant Huntstown is commissioned, suppliers will be able to buy electricity at least from three different sources: Huntstown, ESB auction and Synergen. New producers will have the opportunity to build up a customer base for their future power plant. In this respect it was also noted favourably that the duration of the supply contracts for Synergen output (up to three years) will provide operators with significant certainty for medium term planning.

The Commission also cleared the gas supply contract, under which Statoil will deliver gas to Synergen (30% Statoil participation) for 15 years on an exclusive basis. The Commission considered that the Irish gas market is still dominated by the incumbent gas supplier BGE. The Commission also noted that the Synergen contract is the first large scale gas supply contract for Statoil in Ireland, which raises Statoil's market share slightly above the so called *de minimis* threshold and which should ensure Statoil's long term presence in the Irish gas market. Furthermore the Commission took into account that Statoil offered a special price formula for its gas, which it would not have offered, if it had not been assured a long term exclusivity.