



DETERMINATION OF MERGER NOTIFICATION M/06/073 – BORD NA MONA/EDENDERRY

Section 21 of the Competition Act 2002

Proposed acquisition by Bord na Mona plc of Edenderry Power Limited and Edenderry Power and Operations Limited

Dated 23/11/06

Introduction

1. On 27 October 2006, the Competition Authority (“the Authority”), in accordance with Section 18 (1) (a) of the Competition Act, 2002 (“the Act”) was notified, on a mandatory basis, of a proposal whereby Bord an Mona plc (“BNM”) would acquire the entire issued and to be issued share capital of Edenderry Power Limited (“EPL”) and Edenderry Power and Operations Limited (“EPOL”) (“together Edenderry Power”).

The Undertakings Involved

2. BNM, the acquirer, is a public limited company 100 percent owned by the Irish Government. It was established as a statutory body under the Turf Development Act 1946.
3. The Bord na Mona Group comprises four separate businesses units:
 - Energy: this unit is responsible for the production and sale of milled peat feedstock for the generation of electricity in peat burning power stations;¹
 - Fuels: this unit is responsible for the manufacturing and marketing of peat briquettes, importation and distribution of coal and oil distribution.² The fuels business also manufactures and distributes a range of convenience products including firelighters, Firelog and Firepak;
 - Horticulture: this unit is responsible production and marketing of peat based growing media products for professional horticulture growers, retail suppliers and hobby gardeners. The horticulture business also supplies bark products for the hobby gardening sector; and,
 - Environmental Global: this unit is responsible for waste management, laboratory and technical services, and renewable energy activities.
4. BNM is also involved in a joint venture with Roadstone Provinces Limited which extracts and markets sand and gravel deposits on BNM land. BNM is also engaged in a number of small enterprises including

¹ There are currently three peat burning power stations in the State: Lanesborough County Longford and Shannonbridge County Offaly, both of which are owned by ESB; and the Edenderry Power Plant.

² In Munster and the West of Ireland, Bord na Móna Fuels Limited are involved in the oil distribution business trading as Suttons Oil Ltd, an authorised distributor for Esso.

the operation of ash landfills for peat burning power stations, engineering services and the operation of the Clonmacnoise and West Offaly tourist railway.

5. BNM's worldwide turnover for the financial year ended 29 March 2006 was €295.7 million. BNM's turnover in the State for the financial year ended 29 March 2006 was €228 million. BNM's turnover outside the State is derived primarily from the UK (horticultural and environmental products) and from sales for horticultural products in other European countries. BNM also has a small amount of turnover in the US and other non-European countries.
6. The principal activity of EPL, the target, is electricity generation from a 118MW peat-fired power station located in Clonbullogue County Offaly which supplies electricity to the ESB. The principal activity of EPOL is the provision of operation and maintenance expertise and services to EPL. EPOL does not provide services to third parties.
7. Edenderry Power sells its power to the ESB under a 15 year power purchase and sales agreement ("PPA") dated 19 March 1998. Under the PPA, Edenderry Power has agreed to deliver and sell the entire net electrical output of the power plant and ESB has agreed to purchase the same volume.
8. The entire issued share capital of Edenderry Power is currently held by Powergen Ireland Limited, a company registered in the UK. Powergen Ireland Limited is a wholly owned subsidiary of E.ON UK, which forms part of the broader E.ON Group, one of Europe's largest energy services providers. The ultimate parent company is E.ON AG, a company incorporated in Germany.
9. Edenderry Power's total worldwide turnover for the financial year ended 31 December 2005 was €47.7 million all of which was generated in the State.

Analysis

Horizontal overlap

10. The parties' activities overlap horizontally in electricity generation. Edenderry Power is active in electricity generation from a 118 MW peat fired power station in County Offaly. BNM owns 88.5 per cent of Renewable Energy Ireland Limited which operates a 6.45 MW wind farm at Bellacorrick County Mayo.
11. The undertakings involved have provided data on electricity generation in the State. According to these estimates, there is currently 6,575 MW of generation capacity in the State, giving Edenderry Power and BNM estimated shares of 1.8% and 0.1%, respectively.
12. BNM has full planning permission to develop a new wind farm at the same location in Mayo as its existing interest. This new facility will be capable of producing 320 MW of electricity when fully operational and would increase total generating capacity in the State to 6,895 MW. BNM's share of the increased market would rise to 4.7%. Edenderry Power's share of the larger market would be slightly reduced to 1.7%. As a result of the proposed acquisition of Edenderry Power the merged entity could hold up to 6.4% of the larger market.
13. The Commission for Energy Regulation ("CER") operates a so called "Gate" system through which connection offers are made by EirGrid,

the operator of the electricity grid in the State, to renewable energy generators on a periodic basis. BNM have made two applications to EirGrid for a total generating capacity of 355MW.

14. Neither of BNM's applications have been included in the "Gate 2" group of applications. Accordingly the Bellacorrick applications will be delayed until EirGrid decides which application will be considered as part of the "Gate 3" process. It is therefore unlikely that the additional generating capacity will be available within the next two to three years.
15. BNM are also testing the feasibility of developing a wind farm at Mount Lucas, County Offaly. An application for grid connection has been made to EirGrid in respect of this proposed development. The Mount Lucas application was not accepted as part of the "Gate 2" process. In addition BNM does not yet have planning permission for a wind farm development at this location. It is therefore anticipated that it will be a number of years before generating capacity from Mount Lucas becomes available.
16. The Authority has therefore not considered the future expansion plans for Bellacorrick and Mount Lucas³ and accordingly considers the parties' horizontal overlap to be minimal. The Competition Authority is not of the view that the proposed acquisition will give rise to competition concerns in electricity generation.

Vertical overlap

17. The parties' activities overlap vertically in the supply of milled peat feedstock for electricity generation.
18. BNM is active in the supply of milled peat for electricity generation and other peat-based products. There is currently no other supplier of milled peat for electricity generation based in the State.
19. Edenderry Power operates one peat fired power station in County Offaly. The ESB operates two peat fired power stations in Lanesborough, Co. Longford and Shannonbridge, Co. Offaly. There is a public service obligation on the ESB imposed under Section 39(2)(a) of the electricity Regulation Act 1999 to generate a certain quantity of electricity from peat.
20. BNM supplies Edenderry Power with milled peat feedstock for electricity generation under a long term Fuel Supply Agreement dated March 1998 and will continue to be supplied by BNM if the proposed acquisition receives clearance. In this sense a contractual relationship already exists that will limit the change in the competitive structure of the market.
21. BNM also supplies peat to the ESB in respect of ESB's peat-fired power stations in Lanesborough, Co. Longford and Shannonbridge, Co. Offaly. There is a fuel supply agreement in place between BNM and the ESB until 2020 under which there is a contractual obligation on BNM to supply the ESB with a minimum tonnage of fuel for every contract year and also to hold a specified minimum stock of peat in order to ensure continuity of supply and to reduce the risk to supply posed by poor harvests.

³ This reflects the fact that the Competition Authority typically considers a two year time horizon in evaluating the competitive effects of a merger.

22. The fuel supply agreement between BNM and ESB sets out a mechanism for setting the price of milled peat feed stock and provides for a series of financial penalties payable by BNM to the ESB if the quality of peat falls below certain agreed standards.
23. As contracts are already in place in respect of quantities, prices and quality levels for the supply of peat which will continue to be honoured post acquisition, any change in competitive conditions following the merger is likely to be muted. The Competition Authority is therefore of the view that the proposed acquisition will not give rise to competition concerns.

Determination

The Competition Authority, in accordance with Section 21(2) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by Bord na Mona of Edenderry Power will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect.

For the Competition Authority

Dr. Paul K. Gorecki
Member of the Competition Authority