

Anticipated acquisition by E.ON UK plc of the public lighting business of ABB Holdings Limited and ABB Limited

ME/3582/08

The OFT's decision on reference under section 33(1) given on 16 May 2008. Full text of decision published 2 June 2008.

Please note that square brackets indicate figures or text which have been deleted or replaced at the request of the parties for reasons of commercial confidentiality.

PARTIES

1. **E.ON UK plc (E.ON)** is a subsidiary of E.ON AG of Germany, which is an integrated energy services provider operating in various EU countries and in the US. E.ON's activities in the UK are in the generation, distribution, trading and supply of electricity and the shipping, trading and supply of gas. E.ON is a provider of 'non-contestable' electricity connection services in the East and West Midlands areas of the UK, through its 'Central Networks' business. Central Networks East plc (CNE) is the distribution network operator (DNO) for the East Midlands and Central Networks West plc (CNW) is the DNO for the West Midlands. E.ON is also active in the provision of contestable street lighting connection, installation and maintenance services.
2. **ABB Limited (ABB)** provides a number of energy-related products, systems and services for utility and industry customers. These include its street lighting business (the **Target Business**). The Target Business comprises contestable street lighting connections, street lighting installation and lighting maintenance services in the East Midlands area as well as providing contestable lighting installation and maintenance services as a

subcontractor under Staffordshire County Council's 25 year Private Finance Initiative (the Staffordshire PFI contract). The UK turnover of the Target Business in the year ended 31 December 2007 was [] million.

TRANSACTION

3. Under the proposed transaction, E.ON has agreed to acquire the assets and goodwill of the Target Business and a 60 per cent shareholding in Lighting for Staffordshire Holdings Limited (LFSH), which is currently owned by ABB Holdings.
4. LFSH is the sole shareholder of Lighting for Staffordshire Limited (LFSL), a company created for the purpose of entering into the Staffordshire PFI contract mentioned above. The Staffordshire PFI contract is a 25-year project whereby LFSL provides the finance, design, installation and maintenance of street lighting and illuminated traffic signage in Staffordshire. LFSL is responsible for carrying out an asset replacement programme for Staffordshire County Council over successive periods of five years under the Staffordshire PFI contract.
5. The OFT's administrative deadline for deciding whether to refer the merger to the Competition Commission is 19 May 2008.

JURISDICTION

6. As a result of this transaction E.ON, the Target Business and LFSH will cease to be distinct. The parties' combined share of supply of contestable electricity connection and installation services in the East Midlands and in the West Midlands is above 25 per cent and as a consequence the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

MARKET DEFINITION

7. The parties overlap in the supply of street lighting services which include the following activities:
 - a) contestable connections
 - b) installation, and
 - c) maintenance/repairs

8. One third party raised concerns about the non-contestable segment of the market. Non-contestable works include street lighting being installed by way of direct connection to the DNO's network and the repair of faults to street lighting installed on the DNO's network. Non-contestable services can only be performed by the local DNO or by contractors working under the supervision of the DNO. ABB, which is not a DNO, carried out some non-contestable connection works under contract to CNE. However, this is not in competition with ABB and is therefore not considered to be an overlap.

Product scope

9. The three activities in which E.ON and the Target Business overlap, that is, contestable connections, installation and maintenance/repairs, are clearly not substitutable from a demand-side perspective. However, based on the evidence available before it and in particular the views of third parties, the OFT considers that there may be scope for supply-side substitution. In particular, the know-how, certifications, and specialised staff required are very similar between them.

10. Customers can procure contestable connections, installation and maintenance/repairs services either separately or as a bundle. An increasing amount of work is being commissioned through PFI schemes, which can last for up to 25 years and normally encompass all three of the above activities.

Geographic scope

11. The parties submit that the geographic scope of market for contestable connections, installation and maintenance/repairs services should be Great

Britain, on the basis that the conditions for providing these services are homogeneous throughout Great Britain and the contestable element of connections work can be carried out by any service provider active in the country.

12. Based on the evidence available, there do not seem to be any barriers for providers active in one part of Great Britain to take on a contract in another part of the country. Most third parties considered that this is a national market and contracts are generally awarded regardless of the location of the contractor.

Conclusion

13. Based on the above, the OFT considers that the appropriate frame of reference may include the supply of contestable connections, installation and maintenance/repairs services (taken as a whole) in Great Britain (GB). All third parties who responded to the OFT's inquiries considered that this was likely to be the most appropriate frame of reference.
14. Given that the competition assessment in this case does not turn on market definition, it has not been necessary to conclude on this issue. Accordingly, the OFT has taken a cautious view and considered the merger on the basis of each of the overlapping services (that is, contestable connections, installations and maintenance/repair). In addition, given that the Target Business is only active in the West and East Midlands regions, the impact of the merger will also be considered, where possible, at a regional as well as GB level.

HORIZONTAL ISSUES

15. The parties' combined share of supply at the GB level is just above [0-10] per cent (increment of less than [0-5] per cent) for each of contestable connections and installation services, and less than [0-5] per cent for maintenance/repair services.¹ These market shares (and increments) are too low to give the OFT any competition concerns at the GB level.

¹ There is limited information about the market and nationwide figures for contestable connections in any year. To E.ON's knowledge these are not available. The number of connections, however, is likely to be a function of the number of installations and, hence, is taken as a reasonable proxy for this information.

16. If a narrower geographic frame of reference is considered, the combined share of supply for each of contestable connections and installation services² is [30-40] per cent (increment [0-5] per cent) in the East Midlands and [25-35] per cent (increment [10-20] per cent) in the West Midlands.
17. While the parties' combined shares are considerably higher when viewed through this regional lens, they are not in the circumstances high enough to give the OFT concerns. In relation to the East Midlands, the increment in market share ([0-5] per cent) is too low, and bidding data provided by the parties for the West Midlands indicate that the parties are not particularly close competitors in this market. ABB did not bid for four out the five most valuable street lighting contracts in the East and West Midlands for which E.ON bid for in the last three years.
18. For maintenance services, it is estimated that E.ON and ABB have a combined share of supply, in the West Midlands area, of approximately [10-20] per cent. Currently only ABB carries out street lighting maintenance work in the East Midlands region.

Barriers to entry

19. E.ON has estimated that the financial cost of entering the market for contestable connections, installation or maintenance of street lighting units is in the range of £450,000 to £560,000. There also seems to be a requirement for technical accreditation. In any case, given that the merger does not cause competition concerns, it is not necessary to conclude on the issue of barriers to entry.

THIRD PARTY VIEWS

20. Third party comments support the analysis above. In particular, no customers raised any concerns regarding the loss of competition in the supply of contestable connections, installation and maintenance/repairs services as a result of the merger. Some concerns were expressed about the overall working of the market, but they were not merger-specific. Vertical issues were raised by one customer, who was concerned about the strengthening of E.ON as a DNO provider. However, given that the merger

² See footnote 1.

does not create market power in the affected market, the OFT does not consider that anticompetitive vertical effects may arise from this merger.

ASSESSMENT

21. E.ON and the Target Business overlap in the supply of contestable connections, installation and maintenance/repairs services. Their combined share of supply for each of these three services in Great Britain is less than [0-10] per cent. In the East Midlands and West Midlands regions, the combined share of supply for each of contestable connections and installation services is [30-40] and [25-35] per cent, respectively. For the East Midlands, the increment in market share is only [0-5] per cent, and bidding data provided by the parties for the West Midlands indicate that the parties are not particularly close competitors. For maintenance services, the combined share of supply for the West Midlands area is [10-20] per cent and, currently, only ABB carries out street lighting maintenance work in the East Midlands region. Further, no third parties raised concerns about a loss of competition caused by the merger in relation to any of the overlapping services.
22. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

23. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.