

DETERMINATION OF MERGER NOTIFICATION M/24/032 – ESB/PALLAS WINDFARM

Section 21 of the Competition Act 2002

Proposed acquisition by the Electricity Supply Board of sole control of Pallas Windfarm Limited.

Dated: 12 July 2024

Introduction

1. On 5 June 2024, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed acquisition whereby the Electricity Supply Board (“ESB”), through its wholly owned subsidiary ESB Wind Development Limited, would acquire the entire issued share capital, and thus sole control, of Pallas Windfarm Limited (“Pallas Windfarm”) (the “Proposed Transaction”).¹

The Proposed Transaction

2. The Proposed Transaction will be implemented by way of a share purchase agreement dated 11 March 2024 between Irish Wind Investments Group Limited and ESB Wind Development Limited (the “SPA”). Following the Proposed Transaction, ESB, via its wholly owned subsidiary ESB Wind Development Limited, will acquire 100% of the issued share capital of Pallas Windfarm from Irish Wind Investments Group Limited.

The Undertakings Involved

The Acquirer – ESB

3. ESB is a vertically integrated energy corporation established by statute² with operations at all levels of the energy sector in the State.

¹ ESB and Pallas Windfarm are referred to collectively in this determination as the “Parties”.

² ESB was established by the Electricity (Supply) Act 1927 and operates under the ESB Acts 1927 to 2014, as amended.

4. ESB is majority-owned by the Government of Ireland through the Minister for Public Expenditure and Reform (who holds 86.79% of its issued capital stock) and the Minister for Communications, Climate Action and Environment (who holds 10.21% of its issued capital stock). The remaining approx. 3% is owned by the trustees of an employee share ownership plan.
5. ESB's business activities consist of the following:
 - Generation and wholesale supply of electricity: ESB generates and sells electricity on the all-island Integrated Single Electricity Market ("I-SEM"). ESB's generation and trading business develops, operates and trades the output of ESB's electricity generation assets. Currently, ESB's portfolio consists of primarily thermal and hydropower, with wind and other renewables making up a relatively small percentage of its generation activities.
 - Electricity transmission and distribution: ESB is the owner of Ireland's electricity transmission and distribution systems and holds the Transmission Asset Owner ("TAO") and Distribution Asset Owner ("DAO") licences issued by the Commission for Regulation of Utilities ("CRU"). EirGrid plc ("EirGrid"), a State-owned entity independent of ESB, is the transmission system operator ("TSO") and ESB Networks DAC, a subsidiary of ESB, is the licensed distribution system owner ("DSO"). The TSO and the DSO are responsible for the operation of the transmission and distribution systems respectively and for ensuring the maintenance and development (as necessary) of the systems. The roles of the TSO and DSO also include entering into connection agreements with end-users of electricity and with generators connecting to the system. ESB's functions as TAO, DAO, and DSO are strictly ringfenced from all other functions of ESB, including its electricity generation and retail supply business.
 - Retail supply of electricity: ESB, under the brand *Electric Ireland*, is engaged in the retail supply of electricity, gas and energy services to customers across the island of Ireland. ESB, under the trading name *SO Energy*, is also active in the supply of electricity and gas in Great Britain.

- Energy efficiency consulting: ESB, through its *Smart Energy Services* division, assists businesses to reduce their energy costs (through energy management, lighting as a service, battery storage, heating solutions and demand side response).
- Electric vehicles: ESB, under its *ecars* brand, owns and operates public charging infrastructure.
- Telecommunications: ESB Telecoms Limited, a wholly owned subsidiary of ESB, provides wholesale services such as leased lines and physical infrastructure access, as well as retail end-to-end business connectivity services, in the telecommunications sector. ESB is also a 50% shareholder in its joint venture with Vodafone Ireland Limited, SIRO DAC, which offers wholesale high-speed broadband in Ireland through its growing fibre-to-the-home offering.
- Engineering and major projects services: ESB has civil, environmental, networks and generation engineering capabilities. Through its engineering and major projects (E&MP) division, ESB provides engineering services, including services relating to project management, surveying, electrical, mechanical and civil design, environmental matters, the preparation of submissions for planning consents and asset management to the ESB including the generation and trading business, as well as ESB Networks DAC and ESB's Property and Security division and to joint venture businesses. ESB International³ (the trading name of a subsidiary within ESB's E&MP division) is a global provider of engineering consultancy services, currently working in the Middle East, Africa and the Far East. It also continues to work across Europe, including Ireland and the UK.
- Operation and maintenance ("O&M") services: ESB's O&M services are focussed on customers located internationally and its provision of O&M services in Ireland is limited to intra-group activities and joint ventures in which ESB has a holding. In the case of a wholly owned ESB wind farm, its O&M activity would typically involve management at operational stage (e.g., operating equipment, dealing

³ ESB International Limited, CRO number 136183.

with equipment failure, performance reporting etc.) as well as the maintenance of wind turbine generators and other on-site infrastructure.

6. For the financial year ending 31 December 2023, ESB's total worldwide turnover was approximately [...], of which approximately [...] was generated in the State.

The Target – Pallas Windfarm

7. Pallas Windfarm owns Clahane Wind Farm (37.8MW operational wind farm) and Clahane Extension (13.8MW operational wind farm), each located at Clahane, Co. Kerry, Ireland. Pallas Energy Supply Limited is a subsidiary of Pallas Windfarm and holds a supply licence solely used for the 'supplier lite' power purchase agreement.⁴
8. For the financial year ending 31 December 2023, Pallas Windfarm's total worldwide turnover was approximately [...], all of which was generated in the State.

Rationale for the Proposed Transaction

9. In the merger notification form, the Parties stated the following:

"[...]".⁵

"[...]".⁶

Third-Party Submissions

10. The Commission received a submission from one third party in relation to the Proposed Transaction. The submission was considered by the Commission insofar as it related to potential competition concerns arising from the Proposed Transaction.

Industry Background

11. The electricity industry involves several layers and a variety of regulatory frameworks. The European Commission has described the electricity sector as being divided into:

⁴ A 'supplier lite' agreement is a contractual arrangement that allows electricity generators, particularly smaller renewable energy producers, to sell their electricity directly into the market without taking on the full responsibilities and complexities of being a licensed electricity supplier. This type of agreement simplifies the market participation for these generators by providing them with access to the wholesale market through the assistance of an intermediary or partner who handles the more complex aspects of market operations.

⁵ Merger notification form, paragraph 2.6.1.

⁶ Merger notification form, paragraph 2.6.2.

- generation and wholesale supply of electricity to the wholesale single electricity trading market for purchase by retail electrical suppliers;
 - electricity transmission;
 - electricity distribution; and
 - retail supply of electricity to end-users.
12. I-SEM (previously “SEM”) is the market for the wholesale sale and purchase of electricity on the island of Ireland, which first came into force in November 2007. Through the I-SEM project, the design of the SEM was overhauled from 1 October 2018 to provide for more competitive trading arrangements and to ensure that trading arrangements on the island of Ireland meet the standards of the EU target model for electricity markets so that the I-SEM can be integrated into the Internal Energy Market of the European Union.⁷
13. The I-SEM is regulated by the SEM Committee, which is made up of representatives from the CRU, the Utility Regulator (the “UR”)⁸, and two other independent members. The principal objective of the SEM Committee is to “*protect the interests of consumers of electricity wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with the sale or purchase of electricity through the SEM.*”⁹
14. Through the I-SEM and associated ancillary arrangements detailed below at paragraph 15, there are three key revenue streams for electricity generators. The Energy Trading Arrangements (“ETAs”),¹⁰ Capacity Remuneration Mechanism (“CRM”) and “DS3”¹¹ make up the three main pillars of the market.
15. A single wholesale electricity market, the I-SEM, operates on the island of Ireland. The physical delivery of electricity is conducted in three markets: the Day-Ahead Market, the

⁷ The EU target model for electricity markets is established in several key documents and legislative packages adopted by the European Commission. The primary sources include the Third Energy Package and subsequent regulations and guidelines (including the Fourth Energy Package of 2019) that provide the framework for creating an integrated and competitive energy market in the EU. For more information see: https://energy.ec.europa.eu/topics/markets-and-consumers/market-legislation/electricity-market-design_en.

⁸ The UR is the utility regulator for the United Kingdom.

⁹ Semcommittee.com (2024) *About us*. Available at: <https://www.semcommittee.com/about-us>.

¹⁰ According to the SEM Committee, ETAs make up the major portion of revenue and cost for the majority of market participants in the electricity sector.

¹¹ The Delivering a Secure Sustainable Electricity System or “DS3” is a program initiated by EirGrid and SONI Limited (System Operator for Northern Ireland, UK company number NI038715) to ensure the stability and reliability of the electricity grid in Ireland and Northern Ireland while integrating increasing amounts of renewable energy, particularly wind power.

Intraday Market and the Balancing Market. Trading of financial instruments for the payment of electricity is conducted in the Forwards Market and the Financial Transmission Rights Market while financial incentives to generators to supply electricity at short notice are available in the Capacity Market. It is essential that electricity demand matches electricity supply at all times. The Balancing Market of the I-SEM is used to balance electricity demand with electricity supply.¹² The strike price¹³ of electricity in this market is determined by imbalances between forecasted electricity demand and forecasted electricity supply.

Subsidy schemes for renewable generation

16. The Renewable Energy Feed-In-Tariff ("REFIT") scheme was launched in 2009 to stimulate the growth of renewable energy projects in Ireland. Under this initiative, renewable energy producers were guaranteed a fixed payment for each megawatt-hour (MWh) of electricity generated. This subsidy, structured as a top-up over the prevailing market price, aimed to bridge the perceived financial gap between the necessary MWh price to cover construction costs and the market price influenced by major, continuously operating gas and coal-fired power plants. The subsidy was available to a recipient for a period of 15 years and was awarded to projects that met approval criteria (e.g. planning permission in place) and met construction and grid connection deadlines. Applications for the REFIT scheme closed in December 2015.
17. The Renewable Electricity Support Scheme ("RESS") is a government initiative to subsidise renewable generation, which has replaced REFIT. It is a competitive auction-based scheme for the provision of long-term revenue certainty to renewable energy schemes in Ireland. The aim of RESS is to further incentivise renewable energy project development and contribute to the State reaching its targets for renewable energy of at least 80% renewable energy by 2030.
18. The structure of REFIT and RESS support is that the renewable generator typically enters into a power purchase agreement ("PPA") with a supplier for the term of the support contract and the supplier sells the electricity into the I-SEM. The support is then paid to the

¹² Participation in the Balancing Market is mandatory for generators over the de minimis threshold of 10MW. The Parties note at paragraph 4.4.6 of the merger notification form that "[w]ind generators have the option to sell their power via a PPA to an intermediary (which must hold a supply licence), and the intermediary then sells into the BM on their behalf".

¹³ In the I-SEM, the strike price is primarily related to capacity auctions within the CRM, ensuring that adequate capacity is available to meet peak demand. The strike price serves as a reference point for payments to generators, ensuring they are compensated for their commitment to provide capacity.

supplier, and the commercial split between the supplier and generator is set out in the PPA. Typically, PPAs are entered into with a third party, although some generators will also use the ‘supplier lite’ model (as described above at paragraph 7), using their own supply licence for the purposes of the PPA. The REFIT/RESS support based PPAs are usually 15 years in duration. Following the cessation of these support contracts, windfarms will then typically enter into shorter term PPAs with utilities or supply companies (e.g. such as those between Pallas Windfarm and Energia Power Generation Limited “Energia”) to minimise commercial risks for both parties.

Competitive Analysis

Horizontal overlap

19. There is a horizontal overlap between the Parties as they are both active in the generation and wholesale supply of electricity in the I-SEM.

Vertical relationships

20. There are potential vertical relationships between the activities of ESB and Pallas Windfarm in the State, as ESB is vertically integrated with operations at all levels of the energy sector including power generation, electricity transmission, electricity distribution, and the retail supply of electricity. Pallas Windfarm’s activities, as a generator and supplier to the wholesale electricity market, are such that it may form vertical relationships with ESB as a customer/consumer at various levels of the energy sector, including but not limited to: electricity transmission; electricity distribution; the supply of energy consulting services; and the retail supply of electricity.

Relevant Markets

Product market

21. The Parties submit in the merger notification form that, in relation to the relevant product market, the appropriate frame of reference for the Proposed Transaction is the generation and wholesale supply of electricity in the I-SEM, “*regardless of the source of electricity*”.¹⁴

¹⁴ Merger notification form, paragraph 5.1.14.

22. In relation to the electricity sector, the European Commission in M.8855 - *Otary/Eneco/Electrabel/JV* noted that it consistently defined a relevant product market encompassing both the generation and wholesale supply of electricity, “*irrespective of the generation sources and trading channels*”.¹⁵
23. The Commission has also considered whether the generation and wholesale supply of electricity could be segmented further to consider the various trading channels present in the market. In *M/19/025 – EP UK Investments/Tynagh Energy*, the Commission found that its conclusion on the likely competitive impact of that proposed transaction would be “*unaffected regardless of whether the I-SEM is distinguished into separate markets*”.¹⁶
24. The Commission’s approach in *M/19/025 – EP UK Investments/Tynagh Energy*,¹⁷ in identifying a product market comprised of the generation and wholesale supply of electricity, is consistent with the past decisional practice of its predecessor, the Competition Authority in *M/12/008 – SSE/Endessa*¹⁸ and *M/10/026 – ESB/NIE*.¹⁹
25. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission sees no reason to depart from its approach outlined above²⁰ and in this instance, it is not necessary for the Commission to define the precise relevant product markets because doing so will not alter the Commission’s assessment of the competitive effects of the Proposed Transaction, regardless of whether the potential product market is defined broadly (the generation and wholesale supply of electricity) or more narrowly (the generation of renewable energy to a particular trading channel). For the purposes of its competitive assessment, the Commission has assessed the Proposed Transaction by reference to the following potential product market:

- The generation and wholesale supply of electricity.

Geographic market

¹⁵ M.8855 - *Otary/Eneco/Electrabel/JV*, paragraph 20. Available at:

https://ec.europa.eu/competition/mergers/cases/decisions/m8855_152_3.pdf.

¹⁶ *M/19/025 – EP UK Investments/Tynagh Energy*, paragraph 22. Available at: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m-19-025-ep-uk-investments-ty-nagh-energy/>.

¹⁷ *M/19/025 – EP UK Investments/Tynagh Energy*, paragraph 23.

¹⁸ *M/12/008 – SSE/Endessa*, paragraph 20. Available at: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m12008-sse-endesa-ireland/>.

¹⁹ *M/10/026 – ESB/NIE*, paragraph 45. Available at: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m10026-esb-northern-ireland-electricity-plc/>.

²⁰ M.8855 - *Otary/Eneco/Electrabel/JV*; *M/19/025 – EP UK Investments/Tynagh Energy*; *M/12/008 – SSE/Endessa*; and, *M/10/026 – ESB/NIE*.

26. The Parties submit in the merger notification form²¹ that *“the relevant frame of reference for the generation (and wholesale supply) of electricity is the island of Ireland.”*
27. In *M/10/026 – ESB/NIE*, the predecessor of the Commission, the Competition Authority noted that *“the regulatory obligations faced by operators in the SEM are sufficiently homogeneous to suggest that there is a single electricity market for electricity generation and the sale of electricity at the wholesale level on the island of Ireland.”*²²
28. In *M/20/005 – ESB/Coillte*,²³ in relation to the market for the generation and wholesale supply of electricity, the Commission also considered the competitive impact of that proposed transaction on the island of Ireland.
29. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant geographic markets because doing so will not alter the Commission’s assessment of the competitive effects of the Proposed Transaction. For the purposes of its competitive assessment, the Commission has assessed the Proposed Transaction on an island of Ireland basis.

Conclusion on relevant markets

30. For the purposes of carrying out its competitive assessment of the Proposed Transaction, the Commission has assessed the Proposed Transaction by reference to the following potential relevant market:

- The generation and wholesale supply of electricity on the island of Ireland.

Competitive Assessment

Horizontal Effects

The generation and wholesale supply of electricity on the island of Ireland

²¹ Merger notification form, paragraph 5.1.13.

²² *M/10/026 – ESB/NIE*, paragraph 54.

²³ *M/20/005 – ESB/Coillte*, paragraph 3.39. Available at: <https://www.cpc.ie/business/mergers-acquisitions/merger-notifications/m-20-005-esb-coillte/>.

31. There is a horizontal overlap between the Parties in relation to the generation and supply of electricity in the I-SEM.
32. ESB generates and sells electricity on the all-island market (I-SEM). Currently, ESB's portfolio consists of c.6,007MW of operational generation assets participating in markets across I-SEM and Great Britain (currently estimated at c.4,598MW for the I-SEM). Most of ESB's current electricity generation facilities use thermal (involving the burning of fuels such as natural gas or coal) and hydro power. On the island of Ireland, ESB has interests in seven operational thermal plants (six natural gas and one coal plant), with total installed capacity²⁴ of c.3,028MW, nine hydropower plants and one pumped storage plant with a total installed capacity of c.512MW. On the island of Ireland, ESB also has interests in operational wind farms and battery energy storage systems with total installed capacity of c.866MW.
33. The Parties submit²⁵ that ESB has assets that are under construction and are in the process of entering commission, including Aghada Battery Project Phase 2 (150MW) and TEG West Offaly (264MW) which are both due to become operational in 2024, and Poolbeg open cycle plant (299MW), which is due to become operational in 2027. There is an additional aero-derivative gas turbine plant under construction at Corduff (60MW), which is due to become operational in October 2024.
34. Pallas Windfarm owns Clahane Wind Farm (a 37.8MW operational wind farm) and Clahane Extension (a 13.8MW operational wind farm). These two phases of the Pallas Windfarm's wind farm developments availed of the REFIT support scheme. Clahane Wind Farm entered into a REFIT PPA with [...]. The REFIT support and the accompanying PPA expired in [...]. Clahane Windfarm then entered into [...] PPA with [...] for a [...].
35. The Parties have provided market share estimates for themselves, and their main competitors, based on installed capacity data registered with the Single Electricity Market Operator ("SEMO"). The Parties note²⁶ that this data is based on registered capacity²⁷ and therefore includes ESB plants that are not yet operational. The figures also include plants that remain registered with SEMO and are no longer operational, including Marina (90MW),

²⁴ "Installed capacity" refers to the total output power that the generation assets are capable of producing. It represents the theoretical maximum electrical output that the plants can achieve when operating at full capacity. "Operational capacity" refers to the current generation capacity of the plants that are actively generating electricity.

²⁵ Merger notification form, paragraph 3.3.2.

²⁶ Merger notification form, paragraph 5.2.4.

²⁷ Installed capacity registered with the SEMO.

Lough Ree (100MW) and Derrybrien wind farm (70MW). The Parties submit therefore that the ESB market share figures provided at Table 1 below are “likely to be inflated.”

36. Table 1 below provides estimated market shares of the Parties and their main competitors for the wholesale supply of electricity to the I-SEM in 2023.

Table 1: Generation and wholesale supply of electricity market 2023²⁸

UNDERTAKING	TOTAL INSTALLED CAP (MW)	ESTIMATED SHARE (%)
ESB	[...]	[30-35]
Pallas Windfarm	[...]	[0-5]
SSE plc (“SSE”)	[...]	[15-20]
Energia	[...]	[10-15]
EP (EPH Group) ²⁹	[...]	[5-10]
Bord Gáis Energy	[...]	[0-5]
Orsted Ireland Green Energy Limited (“Orsted”)	[...]	[0-5]
Statkraft Markets GmbH	[...]	[0-5]
ElectroRoute ³⁰	[...]	[0-5]
Bord Na Móna	[...]	[0-5]

²⁸ In the ESB’s response to an information request from the Commission, provided on 5 July 2024, ESB explained that the market shares provided are based on SEMO data and where the power is traded under a PPA, the counterparty to the PPA rather than the owner of the MW is attributed to the market share. However, in the case of one of Pallas Windfarm’s wind farms that trades through a PPA with Energia, this is attributed to Pallas Windfarm. Similarly in the case of a joint venture ESB has with Bord na Móna plc (“Bord na Móna”) which is traded through a PPA with Bord Gáis Energy Limited (“Bord Gáis Energy”), the market share has been attributed to both ESB and Bord na Móna.

²⁹ EP UK Investments Limited, a wholly owned subsidiary of EPH Group, Energetický a průmyslový holding, a.s.

³⁰ ElectroRoute Holdings Limited (“ElectroRoute”), CRO number 497187.

Aughinish Alumina Limited	[...]	[0-5]
Microsoft Ireland Energy Limited	[...]	[0-5]
Others ³¹	[...]	[10-15]
Total Capacity MW	[...] ³²	

Source: The Parties

37. The Parties have provided further market share estimates for the renewable generation of electricity in the State.³³ The Parties submit however that they “do not consider that there is any basis to define a separate market for renewable generation”.³⁴

38. Table 2 below provides estimated market shares of the Parties and their main competitors for the wholesale supply of renewable electricity to the I-SEM in 2023.

Table 2: Renewable generation in 2023

UNDERTAKING	TOTAL INSTALLED CAP (MW)	ESTIMATED SHARE (%)
ESB	[...]	[15-20]
Pallas Windfarm	[...]	[0-5]
SSE	[...]	[20-25]
Energia	[...]	[10-15]
Orsted Ireland Green Energy Limited	[...]	[5-10]

³¹ In ESB’s response to an information request from the Commission, provided on 5 July 2024, ESB stated that the “other” market participants include several undertakings with an estimated market share of less than 1%, including but not limited to: Edenderry Supply Company Limited ([...]%), Cushaling Power Limited ([...]%), Amazon Energy Eoraip Limited ([...]%), and, Shannonbridge Power Limited ([...]%).

³² This total capacity figure was calculated using figures from the SEMO Monthly Registered Capacity Report from November 2023. This total does not take account of “demand side units”.

³³ Merger notification form, paragraph 5.2.3.

³⁴ Merger notification form, paragraph 5.2.2.

ElectroRoute	[...]	[0-5]
Bord Gais Energy	[...]	[0-5]
Statkraft Markets GmbH	[...]	[0-5]
Bord na Móna	[...]	[0-5]
Microsoft Ireland Energy Limited	[...]	[0-5]
Amazon Energy Eoraip Limited	[...]	[0-5]
Lettermuckoo Energy Supply Limited ³⁵	[...]	[0-5]
Oak Energy Supply Limited	[...]	[0-5]
Mount Lucas Supply Company Limited	[...]	[0-5]
Cloncreen Wind Farm Supply DAC	[...]	[0-5]
DWL Energy Supply Limited	[...]	[0-5]
AXPO UK LIMITED	[...]	[0-5]
Sliabh Bawn Supply DAC	[...]	[0-5]
Others ³⁶	[...]	[10-15]

³⁵ On 12 July 2024, ESB informed the Commission that it was in the process of acquiring [...]. The Commission considers that this has no impact on its assessment of the competitive effects of the Proposed Transaction.

³⁶ In ESB's response to an information request from the Commission, provided on 5 July 2024, ESB stated that the "other" market participants include several undertakings with an estimated market share of less than 1%, including but not limited to: Stacks Energy Supply Limited ([...]%); Gaelectric Green Energy Limited ([...]%); Mantlin Limited ([...]%); and Plum Energy Supply Limited ([...]).

Total Capacity MW	[...]
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Source: *The Parties*

39. The Parties have noted that there are certain limitations of market share estimates based on installed capacity (as described above at paragraph 35). The Parties submit that the actual output of plants, in reflecting participation in the market, is a more accurate reflection of market share and as such have provided the following estimates:³⁷

- ESB's market share for the entire wholesale generation market, based on actual output (metered generation), was [25-30]%.
- Pallas Windfarm's market share for the entire wholesale generation market, based on actual output (metered generation), was [0-5]%.

40. The Commission considers that the Proposed Transaction raises no horizontal competition concerns in the generation and wholesale supply of electricity on the island of Ireland for the reasons set out below.

41. First, Pallas Windfarm's share of the generation and wholesale supply of electricity on the island of Ireland is relatively small, irrespective of how the shares of supply are calculated (ranging from [0-5]%), and therefore will represent a minimal increase to ESB's share of supply following implementation of the Proposed Transaction.

42. Second, following implementation of the Proposed Transaction, ESB will continue to face competition from a number of generators of electricity in the I-SEM such as SSE, Energia, Invis Energy,³⁸ Bord na Móna, NTR plc, Power Capital Renewable Energy Limited, Orsted, Parkwind nv, EDF Renewables S.A., Fred. Olsen Renewables,³⁹ ART Generation Limited, Statkraft Ireland Limited, RWE Renewables Ireland Limited, Bord Gáis Energy, and Greencoat Renewables plc.

43. Third, there is substantial regulatory oversight of the relevant markets at issue in the Proposed Transaction, including by the I-SEM which encompasses market power mitigation

³⁷ Merger notification form, paragraph 5.2.7.

³⁸ Invis Energy is the business trading name for the joint venture formed between Hg Capital Renewable Power Partners 2 (a group of UK limited partnerships managed by Hg Pooled Management Limited, a company registered in the United Kingdom with registration number 02055886), and Craydel, an unlimited company incorporated in the Republic of Ireland with CRO number 171933.

³⁹ Fred. Olsen Renewables is a wholly-owned subsidiary of Bonheur ASA.

measures such as a bidding code of practice, a market monitoring unit, directed contracts, vertical ring fencing and local market power mitigation measures.⁴⁰

44. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in respect of the generation and wholesale supply of electricity on the island of Ireland.

Non-Horizontal Effects

Vertical Relationship

45. As set out above at paragraph 20, there is a potential vertical relationship between the activities of ESB and Pallas Windfarm in the State in relation to ESB's vertical integration and involvement at multiple levels of the energy sector. Pallas Windfarm's activities, as a generator and supplier to the wholesale electricity market, are such that it may form vertical relationships with ESB as a customer/consumer at various levels of the energy sector, including but not limited to: electricity transmission; electricity distribution; the supply of energy consulting services; and the retail supply of electricity.
46. The Parties submitted a briefing paper (the "Briefing Paper") to the Commission on 19 March 2024, in accordance with the CCPC's Guidance Note on Pre-notification Merger Discussions dated 27 September 2023. The Briefing Paper requested a waiver from the CCPC from completing sections 4 and 5 of the merger notification form. The Commission granted this waiver by way of email to the Parties on 2 April 2024.
47. The Briefing Paper outlined ESB's regulatory ring-fencing requirements pursuant to its licences granted by the CRU, which include the following obligations:
- ESB's transmission and distribution businesses are strictly ring-fenced from all other businesses of the ESB. This is required pursuant to both statutory and licence obligations and reflects European Union requirements for unbundling of transmission and distribution functions. Licence obligations include restrictions on sharing of information, premises, staff and assets, a requirement that ESB's licensed networks businesses must not discriminate between market

⁴⁰ SEM Committee (2015) *I-SEM Market Power Mitigation Discussion Paper*, paragraph 3.1.2. Available at: <https://www.semcommittee.com/news/i-sem-market-power-mitigation-discussion-paper>.

participants, in particular in favour of its own affiliated businesses, and that the provision or purchase of service to or from ESB's group entities must be at arm's length.

- The SEM Committee also requires 'vertical' ring-fencing between the ESB's generation and supply businesses. These businesses are operated independently and are each similarly subject to prohibitions on cross-subsidies, and restrictions on sharing of information, premises, staff and assets. ESB's retail business operates under the trading name, Electric Ireland, and is based in Santry in separate premises to the generation business (which is based at the ESB's head office).

48. As shown above at paragraphs 35 to 39, arising from the Proposed Transaction, ESB will gain a de minimis increment to its current share of the market (less than 1%).

49. The Commission considers that the actual and potential vertical relationships between ESB and Pallas Windfarm arising from ESB's activities at several layers of the energy sector do not give rise to input or customer foreclosure concerns for the following reasons:

- The increase in ESB's market share following implementation of the Proposed Transaction will be minimal, and as such the Commission considers that this increase is unlikely to result in ESB gaining the incentive or ability to engage in foreclosure of any kind.
- Following the Proposed Transaction, ESB will continue to be subject to the extensive regulatory oversight detailed above at paragraph 47.

Conclusion of Competitive Analysis

50. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

51. No ancillary restraints were notified.

Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby the Electricity Supply Board, through its wholly owned subsidiary ESB Wind Development Limited, would acquire the entire issued share capital, and thus sole control, of Pallas Windfarm Limited, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission.

Úna Butler

Member

Competition and Consumer Protection Commission