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European Commission
Directorate-General for Competition
Consultation Merger Remedies Notice
Merger Registry
B-1049 Brussels
Belgium

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29 June 2007

Dear Sir,

**Consultation on Remedies under Merger Regulations
Response of Scottish and Southern Energy plc**

Scottish and Southern Energy plc (SSE) is a vertically integrated Energy Company based in Great Britain. It has interests in gas distribution and supply, electricity generation, transmission, distribution and supply and other non-energy interests such as telecoms, contracting and water. It has grown organically and also by acquisition and merger and therefore has an interest in the development of guidelines and remedies for potential mergers.

In reviewing the proposals, we have a number of comments for your consideration. These involve the “crown jewels” provisions, the divestiture process and non-reacquisition.

“Crown Jewels” provisions

These provisions apply where the preferred divestiture might be uncertain for a number of reasons. The second choice would have to be a “crown jewel” i.e. at least as good as the preferred divestiture, with no uncertainties as regards implementation and capable of being implemented quickly. While it may seem desirable to have such a second option available, we are concerned that this may result either in the forced sale of a business which had not been contemplated when making the merger, or that there may not be any second option available given the particular business structure.

The new rules should, in our view, include provisions to allow the company to appeal any remedies that would involve the disposal of “crown jewel” assets.

Divestiture Process

The process for divestiture as set out in paragraph 95 includes a normal time limit of six months for finding a suitable purchaser. We agree that six months would be a reasonable time for divestiture in straightforward cases. There is the possibility of agreeing time limits on a case by case basis, in particular with a view to shortening the period in case of a risk to the company’s viability. However, we believe that the period should also be capable of being extended for more complex transactions where the due diligence process for a potential buyer might be extensive.

There is also the provision to appoint a trustee mandated to divest the business at no minimum price in the event that no buyer is found in the first six months. While we accept that this is a “backstop” provision to encourage the company to find a buyer, it could expose the company to divesting at a distressed price. This may create a perverse incentive for prospective purchasers not to bid, knowing that they might be able to purchase later at a much reduced price. This reinforces the point that, in some cases, longer than six months may be necessary.

Paragraph 104 provides for the Commission to approve the proposed purchaser to ensure that it is a proper sale. Given the time limits imposed for divestiture and the potential impact on the divested company’s viability, we believe it would be reasonable for a time limit of two months for this approval to be imposed for the same reasons.

Non reacquisition

Paragraphs 43 and 125 limit the possible reacquisition of companies divested as part of merger remedies. The time limit proposed for this restriction is 10 years and we believe that this is far too long because markets can change substantially in that period. Paragraph 43 recognises that there could be an exception to this rule if the Commission finds that the structure of the market has changed, but we still believe that a period of 5 years would be adequate.

I hope that the above comments are helpful but if you need any further information or clarification please do not hesitate to contact me.

Yours sincerely,

David Densley
Head of European Affairs