



EUROPEAN COMMISSION

Brussels, 19.08.2004
C(2004) 3284

Subject: State Aid N 540/03– Amendments to Alternative Energy Requirement Scheme

Dear Sir,

1. PROCEDURE

1. By letter dated 25 November 2003, registered on 27 November 2003, the Irish authorities notified, according to Article 88(3) of the EC Treaty, the above referenced measure. By letters dated 15 December 2003, 12 March 2004 and 25 June 2004, the Commission asked a series of questions that were answered by the Irish authorities by letters dated 28 April 2004 and 15 July 2004.
2. The measure consisted in the support for the building of additional capacity of new renewable energy-based electricity (RES-E) generating plants. The proposed additional capacity will be awarded to compliant projects on the basis of competitive tendering, in the same manner as for AER V, which was authorised under case N 553/01.

2. DESCRIPTION OF THE AID SCHEME

2.1 Description of the AER scheme

3. In line with the general European Union energy policy, in 1993, the Irish Government decided to establish a specific framework for implementing its commitment to renewable and alternative energy sources. Under the framework, the Irish Government imposes on the State owned electricity distribution company, ESB (“Electricity Supply Board”), to purchase under long-term 15 years’ contracts, the electricity generated by a number of independent green electricity producers, at a guaranteed price. In order to set this guaranteed price, the Irish Government organizes tenders prior to assigning the relevant contracts. Participants to the tenders each state a guaranteed price and the winner is the producer asking for the smallest guaranteed price. These tenders are known as “Alternative Energy Requirements”.

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4. The Commission has already reviewed five rounds of such tenders. Under decision N 826/01, the Commission raised no objections to the schemes of the four first rounds of such tenders, AER I to AER IV. In case N 553/01, the Commission raised no objection to the fifth round of such tenders, known as AER V. With the notification under review, the Irish authorities request the Commission to authorise a sixth round of such tenders, i.e. AER VI.

2.2 Detailed description of the measure (AER VI)

5. The Irish authorities notified the proposal to build additional capacity of RES-E generating plants. In particular, the Irish authorities' intention is to add an additional 720 MW of new renewable energy based electricity generating capacity to the electricity network. According to the Irish authorities, even if all selected projects are built, the contribution from RES-E will remain below the target for Ireland under Directive 2001/77/EC.
6. The additional capacity proposed under AER VI includes capacity of 142 MW which was not allocated under AER V. There is also additional capacity, which is attributed as follows:

Wind - Large scale	up to 400 MW
Wind - Small scale	up to 85 MW
Biomass	up to 10 MW
Hydro	up to 5 MW
Total	up to 500 MW

The Irish authorities state that, as in case N 553/01, there are no restrictions to the size of the applicants, who are selected under the open tendering procedure, in accordance with Directive 93/38/EC.¹ Projects are selected on the basis of the lowest bid in each category. Indexation cannot exceed the change in the Irish Consumer Price Index.

7. The estimated number of recipients is between 51-100.

2.3 Duration

8. The offers will not extend beyond 2005. However, projects in the new categories supported by the scheme, i.e. biomass fed chp and offshore wind, may commence production of RES-E until 2006. The additional time is considered necessary for new RES-E projects in categories which were not previously supported under the AER scheme.

¹ Council Directive 93/38/EEC of 14 June 1993 coordinating procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, OJ L 199 of 9.9.1993, as amended.

9. Power Purchase Agreements under the scheme will not exceed fifteen years, which may extend beyond 2018 in certain cases. The Irish authorities propose that:
- (i) in the biomass, biomass AD, hydro, small scale wind and large scale wind categories, selected projects will be offered a PPA not exceeding fifteen years, and not extending beyond 31 December 2019. The Irish authorities state that an extension to the year 2019 is justified by the time lapsed since the previous competitive round;
 - (ii) in the offshore wind category, selected projects will be offered PPA not exceeding fifteen years, and not extending beyond 31 December 2021. According to the Irish authorities, the extension to 2021 will allow for an extended pre-operational phase in new categories, which were not previously supported by the scheme, and to ensure greater competitive tendering;
 - (iii) in the biomass-CHP category, selected projects will be offered a PPA not exceeding ten years, and not extending beyond 31 December 2016. According to the Irish authorities, a ten-year contract is justified by the accelerated “pay-back” period demanded in this sector.

2.4 Expenditure

10. The price paid to RES-E producers under the scheme, is the individual price submitted, adjusted by the annual change in the Irish Consumer Price Index. This change will be applied only to a portion of the tendered bid price commencing in January 2003. The Irish authorities have amended the terms of the scheme as it was applied under AER V, and authorised under case N 553/01. In particular, the Irish authorities propose that:
- the full annual change in the Irish Consumer Price Index will be applied to the total price of the bid, as opposed to only a portion in case N 553/01, and
 - an option is provided to take an upfront accelerated payment of +35%, in years 1 to 7.5, together with an obligation to accept consequential reduction of 35% in years 7.6 to 15, or years 1 to 5 and 6 to 10, in the case of biomass fed chp.
11. With regard to the application of the indexation to the total price of the bid, the Irish authorities provide, at the request of the Commission, evidence that it results in lower bid prices. More particularly, the Irish authorities provided the table below, comparing price differences arising by indexing bid prices to (i) changes in the (national) CPI and (ii) the (EU) reference rate, for a five year period based on the most recently available published data as referenced previously.

AER VI Price Cap - Large wind	+ annual CPI	+ Ref. Rate	Difference
*5.216 €cents per kWh	€ cents/kWh	€ cents/kWh	
Year 1 adjustment (2000)	5.299	5.513	0.214
Year 2 adjustment (2001)	5.596	5.862	0.266
Year 3 adjustment (2002)	5.870	6.159	0.289

AER VI Price Cap - Large wind	+ annual CPI	+ Ref. Rate	Difference
*5.216 €cents per kWh	€ cents/kWh	€ cents/kWh	
Year 4 adjustment (2003)	6.140	6.455	0.315
Year 5 adjustment (2004)	6.281	6.741	0.460

12. With regard to the accelerated payment option, the Irish authorities state that it was designed, following a review of repayment profiles of typical RES-E projects. The objective of this new payment scheme is to track more efficiently available cash-flow to outgoings, and eventually increase competition by, e.g., assisting those with relatively weaker balance sheets. The Irish authorities refer to examples of three applicants who submitted lower bid prices in AER VI than was previously submitted for the same projects in AER V, as result of the new payment system. Moreover, in the case of the large scale wind category, the lowest price bid reduced from AER V to AER VI.

3. ASSESSMENT

3.1 Existence of aid

13. The Commission has analysed the existence of state aid in the meaning of Article 87(1) EC at the level of the green electricity producers as well as at the level of ESB, in case N 553/01. To the extent that the elements of AER V are the same as those in AER VI, the analysis of the present decision concerns those parts of the tendering procedure which have been amended, to the extent that they may eventually affect the compatibility of the scheme with State aid rules.

Concerning the existence of State aid to ESB

14. As stated in case N 553/01, taking into account that ESB will not be allowed to sell the AER generated electricity under any “green electricity” label, and the fact that most of the renewable energy based electricity is penalised in terms of retail costs by its unpredictable availability, the Commission concluded that the use of this benchmark cannot lead to a level of collected funds transferred to ESB which would be higher than ESB’s excess costs related to AER contracts. As a consequence, the Commission found that ESB derived no competitive advantage from the scheme.

15. For a State support to be qualified as State aid within the meaning of Article 87(1) EC, it must meet four cumulative criteria: it must be selective, it must give a competitive advantage to its beneficiary; it must have an actual or potential effect on trade between Member States, and it must involve State resources. In the absence of one of the four cumulative criteria, i.e. a competitive advantage, the Commission concluded that there was no State aid at the level of ESB.

16. The scheme notified under AER VI, does not involve elements which may affect this conclusion, and therefore the Commission’s finding in this respect remains unaltered.

Concerning the existence of State aid to green electricity producers

17. As stated in case N 553/01, the support granted by the Irish Government to green electricity producers via ESB involves State aid as: (i) a guaranteed fixed price, which may be above market price, combined with a purchase obligation during a long period, confers a considerable and specific economic advantage on producers that have won an AER contract; (ii) this advantage will inevitably distort competition between different categories of producers; (iii) the scheme is likely to have an effect on trade between Member States, given that exchange between undertakings from different Member States is possible within the electricity market; and (iv) the sums collected through the levy to AER contracts' holders constitute State resources.
18. The amendments introduced to the scheme for the purposes of AER VI, do not alter the Commission's conclusions in case N 553/01 in this respect, and therefore the scheme involves aid at the level of the green electricity producers.

3.2 Legality of the aid

19. The scheme was notified in accordance with Article 88(3) EC.

3.3 Compatibility of the aid

20. The scheme is being assessed in accordance with the Community guidelines on environmental aid². According to these guidelines, operating aid for renewable energy sources qualifies for special treatment because of the difficulties these sources of energy have sometimes encountered in competing effectively with conventional sources. Aid may be necessary in particular where, as in the case under scrutiny, the technical processes available do not allow energy to be produced at unit costs comparable to those of conventional sources.
21. Point 61 of the Guidelines provide that Member States may grant support for such renewable energy sources by using market mechanisms such as tenders in order to allow all renewable energy producers to benefit indirectly from guaranteed demand for their energy, at a price above market price for conventional power.
22. Where these systems may constitute State aid, as in the present case, point 62 of the Guidelines allow the Commission to authorise them, if Member States can show that support is essential to ensure the viability of the renewable energy sources concerned, does not aggregate result in overcompensation for renewable energy and does not dissuade renewable energy producers from becoming more competitive.
23. As in case N 553/01, the system arranged under AER VI meets the three conditions provided under point 62 of the Guidelines since:
 - a. Support is essential to ensure the viability of the renewable energy sources concerned: Resulting prices in preceding tenders were still higher than the average price of electricity generated out of non-renewable energy sources. For this reason, investors request full repayment of their investments for the duration of guaranteed demand contracts.

² Community Guidelines on State Aid for environmental protection, OJ 2001 C 37, p.3.

- b. Support does not, in the aggregate, result in overcompensation for renewable energy: the AER tender process ensures that the guaranteed price granted to the green electricity producers will be the smallest price necessary for each producer to recover its investment.
 - c. Support does not dissuade renewable energy producers from becoming more competitive: according to the Irish authorities, competitive pressure remains since out of 167 applications that were submitted, only 70 will receive offers of support. Moreover, the option of an upfront accelerated payment compensated by an equal reduction in payments and indexation to the annual change in the national consumer price index has resulted in some applicants submitting lower bid prices for the same projects that were submitted in the previous tender round.
24. The Guidelines also provide that systems such as the one under review, can be authorised for a period of ten years. However, in this case, as in N 553/01, the Commission accepts the proposal of the Irish authorities to extend the duration of certain contracts up to, and not exceeding, 15 years with the exception of contracts for biomass fed CHP for which the Irish authorities have recognised that the accelerated payback period demanded in this sector, does not justify longer duration contracts.
25. In the biomass, biomass AD, hydro, small scale wind, large scale wind, and offshore wind categories, contracts will reach a duration of fifteen years, as in AER V for which the Irish authorities stressed that a 15-year guaranteed demand was the least expensive option. Moreover, the combination of 15-year contracts, which allowed investors to accept lower repayments/returns, and open competition exert downward pressure on price, which in turn decreases the aid element.

4. CONCLUSION

26. On the basis of the foregoing assessment, the Commission decided that the scheme involves aid to green electricity producers to promote renewable energy sources in Ireland. This aid qualifies for derogation under Article 87(3)(c) EC. The Commission therefore concludes that the scheme is considered compatible with the Treaty.
27. The Irish authorities are requested to provide the Commission with an annual report on the implementation of the measure. Any change to the conditions under which support is granted must also be notified to the Commission for review, before its implementation.
28. In case this letter contains confidential information that should not be disclosed to third parties, we request the Irish authorities to inform the Commission within fifteen working days from the date of receipt of this letter. If the Commission does not receive a motivated request within that period, the Irish authorities will be deemed to agree with the disclosure of the letter, to third parties and to the publication of the full text of the letter in the authentic language on the Commission's Internet site: http://europa.eu.int/comm/secretariat_general/sgb/state_aids/. Your request should be sent, by certified letter or telefax, to the following address:

European Commission
Directorate-General of Competition
Directorate State Aid I
B-1049 BRUSSELS
Telefax n°: 00-32-2-296-1242

Please, mention the name and number of the case in all correspondence.

For the Commission,

Franz FISCHLER

Member of the Commission