

# Saorgus Energy Ltd

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Aidan Kearney  
Commission for Energy Regulation  
Belgard Road  
Tallaght  
Dublin 24

Friday, 04 February 2005

Dear Aidan,

## **Saorgus Energy Ltd submission to CER on ESB Networks pricing submission**

Saorgus Energy Ltd calls on CER not to approve the standard pricing proposals contained in the recent ESB Networks submission to CER. We call on CER to instead abolish the ESB Networks monopoly in construction of network assets at distribution level. This monopoly only serves to increase ESB Networks' profits at generators' expense.

Despite having a statutory duty to promote competition, CER has shown no inclination in the past to remove the ESB Networks monopoly. Indeed, the recent CER direction on group processing of connection applications for renewables further bolsters this monopoly. We have therefore found it necessary to write to the Competition Authority on the matter. The attached letter, which explains our position on pricing in more detail, should be treated as part of this submission.

Yours sincerely,



Aidan Forde

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Advocacy Division  
Competition Authority  
Parnell House  
14 Parnell Square  
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Thursday, 03 February 2005

## **Abuse of dominant position by ESB Networks**

Dear David,

Thank you for your phone conversation of today. ESB Networks has recently made a submission to the CER on pricing of construction of new power lines. The prices submitted for CER approval are well in excess of market-based prices and, in common with other electricity generators, we are concerned that CER will approve these prices.

By regulatory decision, ESB Networks has a monopoly on construction of distribution level (medium and low voltage) power lines. The term used is that the construction is "non-contestable". However, non-contestability does not mean that only ESB staff are allowed to do the construction. ESB Networks uses very many independent contractors for the construction of such lines. Neither is it because of network security – construction of more sensitive high voltage transmission lines is already contestable. It is clear that the only reason for the existence of non-contestability at distribution level can be to give ESB Networks an overall monopoly on the awarding of distribution level construction contracts. The advantages of this to ESB Networks when dealing with generators are obvious. ESB Networks can take full advantage of the market when dealing with its own sub-contractors in order to get the best price available. However, no such advantages are allowed to generators (customers of ESB Networks) who are forced to accept fixed and higher-than-market prices in return. Surely this is an example of abuse of a monopoly position where the advantages of the monopoly are not passed on to the customer. We are of the firm view that

the recent pricing submission from ESB Networks to CER is an attempt to get CER to consolidate ESB Networks' monopoly and to exacerbate the disadvantages suffered by its customers.

Although CER is charged with regulating the monopoly's prices, it is unanimously regarded by generators as being unable and unwilling to meaningfully challenge ESB Networks on such issues. If CER does not force ESB Networks prices to be set at the market level, it will have failed in its statutory duties to protect the interests of customers (in this case generators) and to promote competition. Instead it will effectively preserve and encourage the monopoly in network construction. There is no reason in terms of national economic good or in terms of network security for this monopoly to exist. However, the fact that it has been allowed to exist does not imply that the dominant position can be abused. Therefore, if CER continues to allow the ESB Networks monopoly to impose increased costs on generators, it will be incumbent on the Competition Authority to take action. Following the publication of the forthcoming CER direction on the matter, Saorgus Energy Ltd will make a further submission to the Competition Authority detailing the discrepancies (if any) that exist between ESB Networks prices and market prices.

To illustrate the points above, we would like to draw the Competition Authority's attention to a specific case. Saorgus Energy Ltd has informed ESB Networks that it wishes to construct an underground cable to export power from a new AER6 wind farm at Muingnaminnane in Co. Kerry to a local ESB substation. However, CER and ESB Networks are both working hard to preserve the ESB's monopoly in this case. A recent CER direction stipulates that only overhead ESB-constructed power lines can be used to connect wind farms to the network. In turn, ESB Networks have told us that only they can and will construct this export line. ESB Networks and CER have therefore imposed a situation where an independent contractor will in all probability do the actual work (ESB Networks have too few staff for current work commitments) but with the ESB imposed as a middleman. There can be no reason for this imposition except for ESB to take a CER-approved profit margin on a tendered cost of construction. This is an excellent example of abuse of a monopoly position, cemented in place by the regulator.

The only way to remedy this situation is for generators to be able to challenge costs. We would suggest that the simplest way for this to occur is to make work related to the design and construction of all power lines contestable. However, even if the ESB Networks monopoly remains in place for the short term, generators should be free to invoke the "least cost, technically acceptable" criterion that ESB Networks is itself already subject to. This can be implemented by allowing generators to refer ESB to a cheaper contractor for all aspects of a connection such as design, procurement and construction. Under the existing "least cost, technically acceptable" criterion, ESB Networks should then be required to accept this

contractor as a sub-contractor on the job with a nominal cost added for oversight. However, such a solution would be artificially complex and would allow a needless monopoly to continue. The abolition of the non-contestable rule remains the simplest solution and the only one consistent with current practice relating to transmission connections.

I will make a further submission to the Competition Authority when the CER direction is published.

Regards,

A handwritten signature in black ink, appearing to read 'Aidan Forde', with a stylized, cursive script.

Aidan Forde