

ESB International Ltd
Stephen Court, 18/21 St Stephen's Green, Dublin 2, Ireland
Telephone +353-1-703 8000 **Fax** +353-1-703-7097
www.esbi.ie

22 December 2006

Tadhg O Briain
NIAER
Queen's House
Upper Queen Street
Belfast BT1 6EQ

NIAER Consultation on the Acquisition of Viridian Group

Dear Tadhg

Thank you for providing us with the opportunity to respond on this subject. This response to the consultation by the Northern Ireland Authority for Energy Regulation (NIAER) on the proposed acquisition of Viridian Group by Arcapita is being submitted on behalf of ESB International (ESBI), which has no objection to all or part of it being published by NIAER.

Two ESBI business units are engaged in the electricity market in Northern Ireland – Independent Generation, which owns the 380MW capacity Coolkeeragh generation station, and ESB Independent Energy (ESBIe), which supplies customers in the Northern Ireland market and uses the North-South and Moyle inter-connectors to export any surplus output from Coolkeeragh.

ESBI welcomes NIAER's decision to consult on the Viridian Group acquisition and the implications for the regulation of the NI electricity market and the development of competition. We think it is appropriate for us to respond to two of the questions posed in the consultation paper and some associated issues for the NI electricity market which we regard as relevant to this consultation. Our responses are on the attached page.

We appreciate being consulted on this issue, and the work carried out by NIAER on the consultation paper, and trust that you find our comments useful. Please don't hesitate to contact me if you require any clarification.

Kind regards and best Christmas wishes



Deirdre O'Hara
Manager, Market Strategy
Independent Generation, ESB International

Tel: +353 (0)1 703 8199
Fax: +353 (0)1 703 7097
Mobile: +353 (0)87 805 6866
<mailto:deirdre.ohara@esbi.ie>

ESBI Response

Are the current ring fencing and cash lock-up provisions sufficient to ensure that the financial position of the licensed undertaker does not reflect financial risks taken by other group entities? If not, what additional ring fencing provisions might be appropriate and what might be the costs and benefits of these?

ESBI welcomes NIAER's consideration of the implications for the NIE regulated businesses of their affiliation with the other Viridian Group businesses, and the amendment of the combined NIE licence. However we would prefer to see this go further and provide for separate licences for the separate businesses, with ring-fencing provisions in each licence, and a defined timetable and process for the separation from Viridian Group of the transmission and distribution system operator, as required by European law. Both of these businesses are currently licensed under the single overall NIE licence.

Ring-fencing of the regulated and unregulated businesses is also a matter of vertical ring-fencing as well as the horizontal ring-fencing discussed in the paper. This means business separation of retail and wholesale businesses, particularly the regulated wholesale business NIE-PPB from the unregulated retail business Energia. ESBI is particularly concerned about the competitive implications for other market participants, and for the NI electricity customer, of two particular sets of transactions between Viridian Group wholesale and retail businesses. These are the existing arrangement allowing off-tariff sales by NIE-PPB to Energia and the possible 'grandfathering' in the Single Electricity Market of the contracts between NIE-PPB and NIE's regulated supply business.

In the recent NIAER tariff consultation ESBI commented in some detail on the NI Public Service Obligation and the necessity of ensuring that it is not used to protect NIE-PPB from the market risks faced by its competitors, which would have the potential to distort wholesale electricity competition in NI. This is also an issue for NIAER to take into account in its consideration of Viridian Group's financial ring-fencing arrangements.

Paragraph 44 refers to imposing licence conditions "*in some form*", it would be helpful if Ofreg provided further clarification on what form these conditions may take.

Should Ofreg require NIE to provide information on the same basis as a listed company in addition to NIE's annual regulatory accounts and Viridian's accounts? Would other transparency obligations be appropriate?

ESBI considers that the information available to Ofreg and the market should be sufficient to permit Ofreg to promote competition and to fulfil its commitment to the principles of good regulation (as set out on p 7 of the paper).