

13 December 2006

Tadhg O'Briain
Ofreg
Queen's House
14 Queen's Street
Belfast
BT1 6ER

Dear Tadhg

RE: Consultation on The Proposed Acquisition of Viridian Group PLC by ElectricInvest Acquisitions Limited

The Consumer Council welcomes the opportunity to respond to the consultation on the proposed Acquisition of Viridian Group PLC by ElectricInvest Acquisitions Limited.

We believe that ownership as such is not necessarily the prime concern for consumers. The Consumer Council's primary focus regarding the Viridian Acquisition is the protection of consumers and to ensure that price and service do not suffer.

In considering this issue, the Consumer Council has been seeking to receive assurances:

1. That NIE is 'ringfenced' in regulatory terms;
2. That the company will not be funded solely on debt;
3. That, if in the future, the parent company runs into financial difficulties then NI electricity customers must not suffer;
4. That this proposed takeover of the business does not transfer all risk to electricity customers.

5. That the commitments in the recent Transmission and Distribution Price Control to invest in the infrastructure are adhered to;
6. That, where the proposed takeover shows a weakness in the licence or other regulatory arrangements, these will be addressed and improved;
7. That the Regulator is satisfied, following the consultation process, that this deal will not adversely affect electricity customers;

The Consumer Council wishes to thank Ofreg for providing an opportunity to have an early pre-consultation meeting on this subject. We also followed this up with a meeting with representatives of Viridian who gave full and detailed answers to the questions that we posed, and for which we are also appreciative.

It is our understanding that the seven points listed above have all been addressed by the measures put forward within the consultation document. If this is not the case, we would ask for Ofreg's comments and response in relation to any outstanding issues.

We set out below our answers to the questions posed by Ofreg in the consultation document:

- I. We believe that the current ring fencing and cash lock up provisions, as specified in the T&D Price Control for 2007-2012 are sufficient to ensure the financial position of the licensed undertaker does not reflect financial risks taken by other group entities.
- II. With regard to the existing obligations providing the ultimate-controller undertakings, we believe that the legally enforceable undertaking to refrain from any action that could cause the regulated business to breach its licence is adequate.
- III. On the issue of whether Ofreg should require NIE to provide information on the same basis as a listed company in addition to their annual regulatory accounts, the Consumer Council is of the view that this may be necessary following further analysis by Ofreg. The fundamental principle must be transparency in relation to the operations of the regulated company and if this requires additional information to be obtained from the non-regulated parent company then this should be pursued.
- IV. We agree with Ofreg's suggestion in paragraph 58 that there should be an obligation to have a set number of independent directors included in the NIE licence. Clear guidelines on the criteria for the independent directors should be drawn up in advance in the interests of good corporate governance and transparency.

- V. The Consumer Council agrees that the introduction of a special administrator regime for energy networks in Northern Ireland would significantly strengthen security of supply.
- VI. The Consumer Council has made its views known to Ofreg in April 2006 regarding the supplier of last resort in the context of gas opening. This is consistent with our view in relation to the open electricity market. It is our understanding that Northern Ireland legislation does not currently include a provision to appoint an alternative supplier to ensure continuity of supply. We believe that there is an urgent need to pass this into legislation in order to give Ofreg the appropriate authority. Before further action is taken on this we believe Ofreg must put forward its proposed procedure for doing this and the timeframe envisaged.

If you have any queries regarding the Council's response please contact me on 9067 2488.

Yours sincerely,

JOLEEN CUNNINGHAM
Senior Consumer Affairs Officer