

# Consultation Papers – Synergen Go-Active/ Go-Live Licences and Generic Go-Active/Go Live Licences

A response by Synergen

## 1 Introduction

This note is Synergen’s formal response to the draft revised Synergen and generic licences which would come into force at the go-active and go-live stages of the SEM.

Synergen has combined its response on the Licences into one response as (a) Synergen believes that a number of the Synergen specific clauses should be included in the generic licence given the one-market nature of the SEM, and (b) comments on the SRMC bidding condition apply equally to both Licences.

## 2 Synergen Licence Conditions 3 and 4

The SEM creates one market, with one central energy price set for energy across the Island of Ireland. It is essential that the application of the licensing regime reflects the bringing together of generation and supply markets across the two jurisdictions.

Synergen has, within its existing Licence and carrying forward into its new draft licence, specific conditions that pertain to it. Synergen accepts that there is a clear need for affiliate businesses to be ring-fenced from regulated businesses. This should apply fully to Synergen, and in identical terms to other competitive generation and supply businesses with regulated affiliates.

Synergen has a cross subsidy/discrimination provision that differs from the comparable generic conditions (LC3) and a specific condition regarding “separation of generation Businesses” (LC4) – which is not included in the generic licence. Regarding these conditions:

- Synergen LC3 – The prohibition of cross –subsidies and of discrimination – whilst this LC also exists within the generic licence, certain sections are Synergen specific – for example Section 1, which subjects Synergen to this Condition of it, or its affiliates are dominant in Generation or Supply. This subjects Synergen to this Condition because of the positions of ESBPG and ESBCS. This condition should equally apply to any Licensee whose affiliate or related undertaking is a regulated Transmission, Distribution Supply or Power Procurement business.

- Synergen LC4 – this does not appear in the generic licence but places specific restrictions on Synergen relating to how it represents itself, confidentiality of information, business reporting and contracting with affiliates. Again Synergen is strongly of the view that to prevent regulatory market distortion in the SEM this condition should equally apply to any Licensee who is an affiliate of a regulated business.

The Regulatory Authorities have a statutory obligation of non-discrimination. Synergen is of the view that the application of specific licence conditions to Synergen alone and the omission of such conditions from licences for other market participants with directly comparable affiliate relationships runs contrary to this obligation. The introduction of the SEM and the need to ensure comparable licence obligations for the proper functioning of the market now make it timely and essential for such comparable requirements to be established.

## **2.1 Licence Condition 3: Prohibition of cross subsidies and of discrimination**

Synergen believes that its LC3 should be replaced with LC3 of the Generic Licence. The wording of LC3, section 1 of the generic licence subjects only dominant generators to the LC. As only ESBPG within the Rol is in a dominant position with respect to its generation only it would be caught by such a provision. Synergen believe that it is essential within the SEM that LC3 should apply across each jurisdiction to extent that if a Licenced generator is affiliated to a regulated activity in the other jurisdiction the licence conditions should equally apply to avoid market distortions facilitated by regulatory licence inconsistencies.

## **2.2 Licence Condition 4: Separation of generation business**

Condition 4 of the Synergen Licence places specific restrictions on the company. These specify the ways in which Synergen is separated from its affiliates and related undertakings. Synergen considers that:

- Condition 4 should only address restrictions that need to be in place between Synergen and dominant and/or regulated businesses that it is affiliated with. Synergen should be allowed to operate on the same basis as all other IPPs and independent suppliers in order to ensure fair competition within SEM and the licence requirements should be amended accordingly. Indeed Synergen note that the introduction of a gross pool makes it essential that Synergen can operate on the same basis as its direct competitors.
- In the context of the SEM, LC4 as set out in the Synergen Licence should form part of the generic licence . The NIE Supply Licence, including the PPB Licence Conditions, sets out restrictions that apply to

the regulated businesses in their dealings with affiliates. Comparable provisions exist within the ESBPG Licence in the Rol. If it is considered necessary to additionally ring-fence Synergen, it is unclear why such conditions should not apply equally to other entities that operate in competitive sectors (such as IPP generation) – especially as the SEM creates stronger inter-jurisdictional linkages.

- If the Synergen LC4 provisions are not incorporated in the generic Licence then Synergen does not believe that there is a case for them being maintained in the Synergen Licence. There is no specific case for such conditions applying to Synergen in the context of the SEM if these provisions are not deemed necessary for other entities with similar ownership structures and levels of affiliation.

As with Synergen's comments on Synergen LC3, it is content that these conditions remain in its licence so long as they also form part of the generic licence.

## 2.3 Generic Licence LC3

Synergen is concerned that LC3 of the generic licence is being significantly weakened. Given cross border linkages between businesses, and the greater commercial impact of these in a single market, Synergen cannot see any case for the removal of sections 4,5, and 6 of Generic Licence LC3 (red-lined version – i.e. the deleted sections).

Synergen has certainly heard the argument muted that for generators presently operating under the generic conditions increased ring fencing would be commercially prejudicial and undermine historic and ongoing investments. Synergen wholly refutes this in the light of the changes imposed by the SEM itself – which are far more material. More importantly Synergen would content that the prohibition on cross subsidisation should already be applied to all generators with respect to their regulated affiliates and the extent to the reinforcement of such requirement might be commercially prejudicial merely serves to highlight that the competitive advantage is being illegitimately obtained from the failure to implement such basic ring fencing requirements. Synergen believes that the introduction of SEM makes it essential that such ring fencing requirements are applied on comparable basis across both jurisdictions. to ensure the proper operation of the market.

Synergen proposes:

- The original clauses 4,5, 6 are re-instated, and this re-worded version of LC3 replaces LC3 of the Synergen Licence – i.e. there should be a restriction on the obtaining of commercially sensitive data.

### 3 Synergen LC16/Generic LC15

References to this Licence condition are numbered in relation to the Synergen Licence, but apply equally to LC15 of the generic licence.

Synergen has commented on many occasions regarding the principle and application of the SRMC bidding principles. Comments on the detail of the proposed condition should not be interpreted as Synergen supporting the application of SRMC bidding principles to any generator licence holder.

With regard to any LC imposed on SRMC bidding, it is important that generators are allowed sufficient scope to reflect their underlying costs. Synergen has no objection in principle to this being Opportunity Cost (indeed that decision has been made by the RAs and that is reflected in the draft LC) but the RAs must stop short of defining how that is to be calculated. Synergen believes that the Bidding Principles document crosses this boundary – and it is commenting separately on this issue.

Regarding section 5 of LC16, Synergen strongly believes that the Bidding Principles document should provide working clarification to Licensees, but that the LC is what binds the Licensee. Thus, the Bidding Principles document should have advisory status.

The change process set out in the draft Bidding Principles document is unsatisfactory, and provides significantly less certainty to generators on highly commercial aspects of their business, as the basis of bidding could be altered solely at the RAs discretion. Notwithstanding that Synergen believes that the Bidding Principles document should only be advisory, if it had a status whereby generators were subject to provisions within it, the change control process should be as for a proposed Licence amendment.

In principle, Synergen strongly opposes a separate Bidding Principles document where this introduction regulatory risk to the fundamental operation of Synergen's business with the SEM. Furthermore Synergen believes that a licence modification which provides for further modification to the bidding principles outside of the Trading and Settlement Code or the licence is not necessary for the operation of the SEM and falls outside the provisions Condition 14A of the Electricity Regulation (Amendment) (Single Electricity Market) Act 2007.

Synergen suggest a redrafting for Sections 5, 6 and 10 of Licence Condition 16. This is presented as Appendix A.

## 4 Summary

Synergen believes that its “ring fencing” provisions (notably the wording of LC3 and the inclusion of its LC4) should be aligned with comparable entities. It would be most appropriate to strengthen the licences of other generators so they reflect the Synergen LCs. Failing this, Synergen believes that it should be subject to the generic licence – not a specific stronger licence – particularly as in the context of the SEM it does not perceive that its relationship with related undertakings or affiliates should be judged differently to, for example, Huntstown and its related entities.

For Synergen not only to be obliged to bid in particular manner, but to be told how to calculate that price places an unacceptable risk that the bidding principles may prescribe generic requirements which do not reflect Synergen’s direct underlying opportunity costs. These changes in total represent a far greater regulatory threat than ring fencing provisions would impose.

## Appendix A Proposed LC 16

### Condition 16: Cost-Reflective Bidding in the Single Electricity Market

5. The Commission may publish, and from time to time by direction amend, a document to be known as the Bidding Code of Practice, which shall have the purposes of setting out the working principles of the Market Monitor. These principles will provide interpretive guidance to participants, but for the avoidance of doubt the conditions of the Licence will take precedent.
- ~~(a) defining the term Opportunity Cost;~~
- ~~(b) making provision, in respect of the calculation by the Licensee and other generators of the Opportunity Cost of specified cost items, for the treatment of:~~
- ~~(i) the costs of fuel used by generators in the generation of electricity;~~
- ~~(ii) the value to be attributed to credits issued under the Emissions Trading Scheme established by the European Commission;~~
- ~~(iii) variable operational and maintenance costs;~~
- ~~(iv) start-up and no-load costs; and~~
- ~~(v) any other costs attributable to the generation of electricity; and~~
- ~~(c) setting out such other principles of good market behaviour as, in the opinion of the Commission, should be observed by the Licensee and other generators in carrying out the activity to which paragraph 1 refers,~~
- ~~and the Bidding Code of Practice may make provision for directions to be issued from time to time by the Commission to the Licensee and to any other generator in relation to the carrying out of the activity to which paragraph 1 refers.~~
6. The Licensee shall, in carrying out the activity to which paragraphs 1 – 4 of this Licence Condition, ~~refers, act so as to ensure its compliance with the requirements of the Bidding Code of Practice and any directions issued under it.~~
10. In this Condition:

**"Opportunity Cost"**

Means the cost of an alternative that must be forgone in order to pursue a certain action. This is the, the benefit that a Licencee would have received by taking an alternative action, ~~shall have the meaning set out in, and the value calculated in accordance with, the terms of the Bidding Code of Practice;~~