



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

CER Consultation Paper Debt Blocking

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Abstract:

Given that both suppliers and the Commission have varying concerns on the issue of debt and debt blocking, this consultation paper requests respondents' views on three alternative proposals for potential courses of action on the matter.

Target Audience:

This consultation paper is for the attention of electricity and gas suppliers, energy industry participants, consumer and business organisations and all other interested parties.

Related Documents:

[CER/04/044](#) – Management of Customer Arrears

[CER/05/060](#) – Management of Customer Payments & Arrears

Responses to this consultation should be returned by email, post or fax and marked for the attention of Elizabeth Farrelly at the Commission.

The Commission intends to publish all submissions received. Respondents who do not wish part of their submission to be published should mark this area clearly and separately or enclose it in an Appendix, stating the rationale for not publishing this part of their comments.

Executive Summary

The Commission issued a decision paper CER/05/060 in 2005 which restated the Commission's view that the change of supplier process and other market procedures should not include or accommodate objections for the purpose of restricting customers in arrears or debt from changing supplier.

Since this decision was published, some suppliers in both the electricity and gas markets have requested that the Commission review this decision given their concerns that the current economic climate is giving rise to higher amounts of customer debt and their view that there is an increase in customers changing supplier before they have settled their outstanding bills.

In this regard suppliers have submitted a proposal to introduce debt blocking for business customers as they are of the opinion that the debt management tools that are currently available are ineffective.

While the Commission understands the concerns of suppliers, there are issues it needs to consider such as the potential for the abuse of such a system, the potentially problematic experience of debt blocking in other countries and its compatibility with EU requirements that customer switches are facilitated with minimum delay.

Given that both the suppliers and the Commission have varying concerns on the issue of debt and debt blocking, this consultation paper requests respondents' views on three alternative proposals for potential courses of action on the matter. The three proposals for potential courses of action are as follows:

- 1) Maintain the current change of supplier process which does not facilitate debt blocking,
- 2) Introduce process changes to assist suppliers to better manage indebted customers,
- 3) Introduce debt blocking for business customers.

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1.0 Introduction

1.1 *The Commission for Energy Regulation*

The Commission for Energy Regulation ('the Commission') is the independent body responsible for overseeing the regulation of Ireland's electricity and gas sectors. The Commission was initially established and granted regulatory powers over the electricity market under the *Electricity Regulation Act, 1999*. The enactment of the *Gas (Interim) (Regulation) Act, 2002* expanded the Commission's jurisdiction to include regulation of the natural gas market, while the *Energy (Miscellaneous Provisions) Act 2006* granted the Commission powers to regulate electrical contractors with respect to safety, to regulate to natural gas undertakings involved in the transmission, distribution, storage, supply and shipping of gas and to regulate natural gas installers with respect to safety. The *Electricity Regulation Amendment (SEM) Act 2007* outlined the Commission's functions in relation to the Single Electricity Market (SEM) for the island of Ireland. This market is regulated by the Commission and the Northern Ireland Authority for Utility Regulation (NIAUR). The Commission is working to ensure that consumers benefit from regulation and the introduction of competition in the energy sector.

1.2 *Purpose of this paper*

The purpose of this paper is to seek the views of the public and the CER's stakeholders with regard to ***the issue of supplier debt and debt blocking and to obtain respondent's views on the three proposed courses of action on the matter***. In order to make an informed and impartial decision on this topic, the Commission wishes to obtain comments from members of the public, the energy industry, consumer and business organisations, customers and all interested parties.

1.3 *Structure of this paper*

This paper is structured in the following manner:

Section 2 outlines suppliers' concerns regarding an increase in supplier bad debt and their belief that there is an increase in the number of incidents of customers changing supplier without settling their outstanding bills. This section details the proposal to introduce debt blocking for business customers and subsequently summarises some of the Commission's concerns regarding this proposal.

Section 3 sets out and invites comments on three alternative proposals for potential courses of action on the matter.

1.4 Responding to this paper

The Commission requests that responses from interested parties to this consultation paper are submitted by 5pm on the 18th of September 2009. Responses should be sent, preferably in electronic format to:

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1.5 Background Information

Debt blocking is the process whereby an outgoing supplier prevents their customer moving to a new supplier on the basis that the customer has an outstanding debt owed to the outgoing supplier. Processes in the Irish gas and electricity markets are designed to encourage switching and to ensure that the outgoing supplier does not try to win back their customer before the switch is effected.

In 2004 the Commission issued a consultation paper, CER/04/044, 'Management of Customers Arrears'. This paper outlined the Commission's opposition to suppliers imposing restrictions on customers in arrears from switching supplier. This paper also identified alternative market instruments available to suppliers, which could be utilised to mitigate their exposure to customer debt including: security deposit payments, direct debit, prepayment meters and as a last resort, de-energisation.

In 2005, the Commission issued a decision paper, CER/05/060, 'Management of Customer Payments & Arrears', which reiterated the Commission's opposition to debt blocking subsequent to the transposing of EU Directive 2003/54/EC into Irish legislation through S.I. No. 60 of 2005. This S.I. includes a regulation which refers to minimum contractual requirements between suppliers and domestic customers (including small to medium sized businesses) for the purpose of consumer protection. In particular, this regulation notes that such contracts should include the requirement that customers shall be facilitated, if they so wish,

in changing licensed supplier and should not be charged or penalised for doing so. In light of this, the 2005 decision paper reiterated the Commission's opposition to debt blocking in line with the following rationale:

- Applying such a customer switching objection process may be contrary to the Directive and the consumer protection measures therein;
- The monitoring of such a formal objection process would place a large bureaucratic burden on the Commission.
- The introduction of debt blocking could leave customers exposed to suppliers using debt blocking as a means to prevent customers from switching.
- Suppliers may themselves employ number of effective debt prevention measures as stated in CER/04/044.
- Bad debt is a risk prevalent in commercial environments. Consequently, the onus should be on the supplier to proactively manage customer arrears without reliance on debt blocking, given that the principle of any competitive market is that risk should be managed by the company.

In September 2007 some electricity suppliers reiterated their support for debt blocking and their opposition to the Commission decision on the matter at the Industry Governance Group (IGG) forum. Since this time, both electricity and gas suppliers have consistently called for the Commission to re-examine their decision and introduce debt blocking for business customers at the monthly Gas Market Arrangements Retail Group (GMARG) and IGG meetings. This is because the consensus among suppliers is that the current debt management instruments are insufficient and because customers currently have the ability to change supplier without paying their outstanding debt. Accordingly, suppliers have requested modifications to the current debt management practices and proposed another mechanism be introduced whereby suppliers can block business customers in arrears from switching to a new supplier.

2.0 Debt Blocking

2.1 Introduction

In order to examine the suppliers concerns which were articulated at the IGG and GMARG forums since the 2005 decision, the Commission requested that suppliers submit written evidence to the Commission to substantiate their claims. In particular the Commission requested that suppliers provide quantifiable information to demonstrate the scale of the problem facing the industry.

During 2008 and to date in 2009 the Commission has received submissions from suppliers in this regard.

2.2 Suppliers Concerns and Debt Blocking Proposal

The consensus in the submissions received at various stages from suppliers, is that the current debt protection measures outlined in the 2004 consultation paper are ineffective and that there is an increase in the number of customers who change supplier in order to avoid paying a debt.

In their submissions suppliers expressed that the current debt managing options were insufficient for the following reasons:

- **Security deposits:** Suppliers noted that security deposits are not utilised in the event of a change of tenancy and thus in this situation there is nothing to stop a new customer consuming electricity or gas prior to signing a contract and then initiating a change of supplier request without paying for the energy they had consumed. Suppliers also suggested that security deposits do not fully offset the debt incurred by suppliers and expressed their concern that requesting a larger security deposit would be a barrier to customer acquisition.
- **Direct debits:** Suppliers suggested that direct debits do not guarantee payment to suppliers as a substantial number of customers fail to maintain regular direct debit payments. Furthermore, suppliers stated that customers can consume energy over a billing period and cancel payment prior to billing settlement and then initiate a change of supplier request without paying their monies owed.

- Prepayment meters (PPM): Suppliers noted that this is an ineffective tool as PPM are currently not available to electricity customers of independent suppliers. A supplier noted that the Commission had expressed that it did not wish to see a high proliferation of PPM in the gas market.
- Credit checks: Suppliers noted that there is no industry specific credit vetting database to enable appropriate credit vetting and suggested that internal credit checking systems cannot effectively manage business customers who engage in debt hopping.
- De-energisation: In their submissions suppliers argued that de-energisation is a protracted process and suggested that customers are increasingly initiating the change of supplier process when they receive a notification from their supplier that the supplier intends to issue a de-energisation/cut off request to the Distribution System Operator (DSO).

The supplier submissions noted that the above issues are exacerbated by the fact that current market conditions are different to those that existed when the 2005 decision was made. Firstly, suppliers noted that when the Commission issued the decision that there would not be an objection process for suppliers on the basis of debt, not all sectors of the gas and electricity markets were in reality able to change supplier and consequently, there was substantially less opportunity for customers to move to another supplier without paying their outstanding debt. Secondly, the submissions from suppliers noted that there has been a significant change to market conditions in the form of the deterioration in the general outlook for the Irish economy. Suppliers drew reference to the increase in companies in examinership, receivership and liquidation in 2008 which they suggested will double in 2009.

Suppliers further suggested that unlike most other commodities, energy bills form a significant proportion of household and business customers' expenditures and thus there are substantial risks for energy suppliers in providing credit to customers. It was noted that in the energy industry, electricity and gas suppliers must continue supply even when it is apparent that a customer is defaulting in order to follow codes of practice on disconnection, which state that customers cannot be disconnected at certain times and certain circumstances. Thus, it was suggested that suppliers are consequently left with the option of invoking lengthy and expensive legal proceedings to recover debt which they believe is a disproportionate measure ultimately paid for by all customers.

Some suppliers suggested that if supply companies are forced to delay their payments due to a heightened drain on cash flow arising from increased levels of

debt, the Commission would have no other option than to issue supplier of last resort directions and suspend suppliers from the market.

Suppliers provided some data purporting to illustrate the high levels of debt written off and customers with third party litigation directly attributable to customers moving to a new supplier without paying their outstanding debt.

In light of their concerns, there was a proposal from suppliers in 2007 that the change of supplier objection process be amended to allow for objections to be raised where a business customer has an aged debt or defaults on a contract. The following conditions were proposed:

- The definition of aged debt would be set out in the contract conditions between the supplier and the customer.
- In the absence of contract conditions, an aged debt could be defined as an invoiced amount greater than €500.
- The outgoing supplier would have 2 working days after they have been notified of a customer loss to raise an objection on the basis of outstanding debt/contract default.
- Should a supplier raise an objection on these grounds, the change of supply request would be automatically cancelled.

Suppliers suggested that not only would this prohibit the increasing number of customers changing supplier to avoid paying their debt but would also harmonise the arrangements in Ireland with that of Northern Ireland which has debt blocking procedures for business customers and Great Britain which has debt blocking procedures for domestic and business customers. Suppliers also suggested that this would be in line with other countries in Europe.

2.3 Commission's Concerns Regarding Debt Blocking Proposal

In January 2009, the Commission circulated a notification to the GMARG and IGG forums indicating that while the Commission recognises the concerns that suppliers have raised on bad debt, the Commission considers that the above issues are common to all industries and not specific to the energy sector. Furthermore this notification expressed the view that the Commission did not consider it appropriate to introduce sector specific measures, which restrict

customer choice and movement in the absence of a very compelling case from suppliers.

The rationale behind this notification was in line with the following issues:

Bad debt is a risk in all commercial markets and is not exclusive to the energy industry, and it does not appear that the provision being sought exists in any other utility or service market in Ireland.

It is possible that the introduction of debt blocking could have a negative effect by reducing a supplier's incentive to manage risk, as a customer would be forced to stay with their current supplier as long as there was a debt outstanding.

The Commission has received data from suppliers which purport to indicate the amount of debt owed to suppliers which is directly attributed to customers who have 'debt hopped'. However, the data received is incomplete in that it is very difficult to make a meaningful assessment of the debt problem facing the industry and also the true percentage of supplier debt directly resulting from customers moving suppliers without paying monies owed. Furthermore, no data has been provided to illustrate what reduction in bad debt levels would result from the introduction of a debt blocking procedure. The Commission would ask that any submission to this consultation should attempt to provide as much data on these issues as is practicable.

It is possible that the supplier concerns regarding increasing customer debt in the current economic climate could be addressed in the continued work on the revenue protection procedures being undertaken by the Commission and participants in both the electricity and gas markets. Furthermore, it was considered that many of the supplier concerns would be addressed by the significant strengthening of debt management instruments arising from the proposed changes to Section 15 & 16 of the Energy (Miscellaneous Provisions) Act 1995 which the Commission has been working closely with the Department of Communications, Energy and Natural Resources (DCENR) to amend and implement.

A debt-blocking procedure for business customers might also be against the trend of current practices in other European countries. For instance, a report published by the European Regulators Group for Electricity and Gas (EREG) in April 2008 describes the switching process in three stages;

- 1) Information gathering,

- 2) The supplier switching procedure,
- 3) Execution of the switch, delay or cancellations.

This report recommends that the third stage is shortened to a minimum and that DSO's and/or incumbent suppliers should not be able to object to the implementation of a customer switch (except where there is an administrative error, i.e. incorrect meter read).

Whilst the ERGEG report indicates that 10 of 21 EU countries have a procedure to object to a customer switch in place, it is apparent that this does not relate to blocking a customer in debt from changing supplier but in many cases refers to a disconnection for non payment or an objection due to an incorrect meter read.

However, debt blocking is prevalent in Northern Ireland which has debt blocking procedures for business customers, and Great Britain which has debt blocking procedures for domestic and business customers. The British energy regulator (Ofgem) has reviewed the debt blocking arrangements three times in the past five years, most recently this year as part of the Energy Supply Probe. A recent publication by Ofgem on the issue notes that the action to review the current debt blocking arrangements in the UK was widely welcomed by consumer organisations and that while there may not be any major changes to the current arrangements at the moment there may be scope for change in the future.

3.0 Next Steps: Proposals

The preceding section outlined supplier concerns regarding debt in the current economic climate and their belief that there is an increasing propensity for customers to change supplier to avoid paying off their outstanding debt. It has also indicated some of the potential problems with regard to bringing in debt-blocking.

Given that there are concerns on both sides, the Commission is inviting comment on the following three alternative proposals which the Commission consider to be potential courses of action on the matter. However, the Commission is interested to hear any variations on these proposals, but would ask that all submissions provide evidence to support their position.

Proposal 1: Maintain the Status Quo

This proposal would involve maintaining the current change of supplier process which does not contain a provision for suppliers to prevent an indebted customer moving to a new supplier.

This would be consistent with the ERGEG recommendation that former suppliers should not hinder the switching procedure.

In progressing with this proposal suppliers can utilise the current debt management mechanisms and are furthermore incentivised to; develop innovative measures to control debt levels, take action as early as possible when they believe a customer is getting into debt and provide arrangements which will help the customer pay off their debt as soon as possible.

Under this proposal debt management provisions will be further developed through progression of the Joint Electricity and Gas Revenue Protection Workshops. Furthermore, the strengthening of the provisions of Sections 15 & 16 of the Energy (Miscellaneous Provisions) Act 1995 regarding theft of electricity and gas will further address many of the suppliers concerns regarding debt.

Q.1: What are respondents' opinions on proposal 1?

Q.2: Are there any other measures which the Commission could take to alleviate suppliers concerns regarding debt levels?

Proposal 2: Introduce Process Changes

Many suppliers believe that there is an increase in the incidence of customers initiating the change of supplier process upon receiving a letter/notification from their supplier indicating that the supplier intends to issue a disconnection request to the DSO for non payment of account.

The Commission proposes that a change to system processes may remedy this issue and so invites comment from respondents on the following.

The system process would be as follows: the Gas Point Registration Operator (GPRO)/Meter Registration System Operator(MRSO) receives a notification from the supplier that the customer has been sent a first notice of disconnection, from this point the 21 day change of supplier rule is enacted. This would mean that where a disconnection notice has been issued to a customer, any change of supplier request subsequently submitted would not be processed until the elapse of 21 days after the disconnection notice was sent. Thus the change of supplier would proceed but as the disconnection would take place before the change of supplier, it would be with a disconnected supply.

Such a process would act as a disincentive to customers who may consider moving supplier to avoid disconnection or paying a debt as they would still have to pay a disconnection and reconnection charge to their new supplier. This would be particularly effective on those businesses who would be severely impaired if they were without electricity or gas supply for even one day.

This process would also be consistent with the ERGEG recommendation.

Q.3: What are respondents' views on proposal 2?

Q4: Are there any other process changes (aside from debt blocking) which would be useful for managing indebted customers?

Proposal 3: Introduce Debt Blocking for Business Customers

As detailed in section 2.2 of this paper, suppliers have made a proposal which requests that the change of supplier objection procedure is altered to introduce an objection facility for suppliers in the case of customer debt or contract default. The introduction of this objection procedure would in the view of suppliers, prohibit the increasing numbers of business customers changing supplier to avoid paying their bills in the current economic climate.

As set out in section 2.3 of this paper, the Commission would have a number of concerns regarding the appropriateness of introducing debt blocking for business customers.

Furthermore, there would be practical issues that would need to be considered before any such proposal could be implemented. These include:

- who would assess, monitor and police the debt blocking process and ensure that such a system is not abused by suppliers?
- as with the experience in the UK, would the debt blocking system in Ireland have to be continually re-examined and altered?
- what would classify as a default of contract?
- what would be the debt threshold?
- would suppliers be adequately incentivised to manage risk and minimise customer debt?
- would additional requirements need to be placed on suppliers to help customers who they have debt blocked pay back what they owe, eg payment plans?
- how could having a debt blocking procedure be reconciled with the ERGEG recommendation?
- in approving the implementation of a debt blocking procedure, the Commission would be tacitly accepting that supplier allegations of customer debt are accurate. Would this affect the Commission's dispute adjudication?
- what would be the cost of system changes to introduce debt blocking?
- what would be the impact of introducing debt blocking on the overall debt levels in the energy industry?
- would pressure be put on the Commission to introduce debt blocking for domestic customers as well as debt blocking for business customers? The proposal set out in 2008 suggested an aged debt threshold of €500, however, this low threshold would presumably encapsulate some domestic customers.

Q.5: What are respondents' views on proposal 3?

Q.6: Are there any other issues that the Commission should consider in relation to this issue?

