Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

Review of the Regulatory Framework for the Retail Electricity Market

Proposals on a Roadmap for Deregulation

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Abstract: The Commission for Energy Regulation is consulting on the circumstances under which the price control should be removed from the Public Electricity Supplier ESB Customer Supply. The Commission is also inviting submissions on what other actions should be taken apart from the removal of the price control in order to ensure a fully competitive deregulated electricity retail market.

Target Audience:

This paper is for the attention of members of the public, the energy industry, customers and all interested parties.

Responses to this consultation should be returned by email, post or fax and marked for the attention of Paul Fuller 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 Irish electricity market has traditionally been dominated by the Electricity Supply Board (ESB) which was the incumbent generator and supplier of electricity to all consumers. The prices in both supply and generation have been regulated by the Commission since 1999, though the setting-up of the Single Electricity Market (SEM) in 2007 removed direct price regulation from the generation market. In the last 10 years, there has been continued entry in both the generation and supply markets and the entry earlier this year by both Airtricity and Bord Gáis Energy (BGE) to the residential supply market was a significant step. It is against this background that the Commission considers it appropriate and necessary to consult on a roadmap for removing price regulation from the supply (retail) market

The theory of regulation suggests that electricity supply markets can be marked by fully effective competition, and evidence from de-regulated supply markets tends to support this view. This is further supported by policy coming from the EU, including the European Commission, Member States and the Regulators, which suggests that effective competition is likely to be superior to regulation and thus where markets are effectively competitive the replacement of end user retail tariff regulation in electricity and gas markets is a desirable outcome. The Commission considers that a fully competitive retail market can bring real benefits to consumers in terms of the choice and quality of the offers available from suppliers, improved value-add services and potentially lower prices.

The Commission considers it important to note, however, that removal of price regulation does not automatically guarantee low prices. Irish electricity prices are predominantly determined by international fossil fuel prices as Ireland has one of the highest dependence on electricity generated by fossil fuels in the EU. In a fully competitive market, changes in fossil fuel prices will still be the dominant factor in determining the level of Irish electricity prices.

Introducing competition in the Irish electricity market has, so far, led to the following results;

(i) within the business markets competition has been present for some time and there is increasing evidence that markets are competitive or prospectively competitive and that direct tariff regulation should be removed.

(ii) in the domestic market competition has only recently developed but in a short space of time has had a significant impact on the incumbent market share.

Based on this, the paper outlines a “road-map” setting out the likely path for retail deregulation and the various possible trigger points that might indicate that full or partial deregulation is merited. It considers the possible withdrawal of direct price controls in the business and residential sectors. In detailing the roadmap, the Commission suggests there should be a structured process of assessment, and the mechanisms and processes provided by competition law for the assessment of dominance appear to provide a reasonable framework for decision-making. This process involves defining relevant markets, the assessment of suppliers with dominant positions and the application of, or removal of, regulatory obligations in light of the above.

This paper addresses retail competition in the electricity market only. The analysis undertaken to date suggests that the geographic scope of the market to supply electricity at the retail level is national (and currently excludes the NI market, partly because retail switching systems are not expected to be fully functional until 2012). The national market can further be segmented into four or five distinct segments, distinguished by differences in the competitive dynamics and conditions of supply. The segments identified are Large Energy Users, Medium sized business, Small business, and Domestics plus/minus Public Lighting.

An analysis of the development of competition in these markets suggests that under reasonable thresholds for the establishment of an effectively competitive market, the various business markets are already competitive, or may be close to effective competition. The domestic market has only very recently seen the entrance of competition but there have been dramatic falls in the market share of the incumbent, ESB Customer Supply, and a resulting decline in market power. While it might be premature to describe this particular market as being effectively competitive, it is showing very positive trends towards that position. The Commission has set out a range of thresholds for the removal of the price control in terms of the combined market share of the two ESB supply businesses, by load. These are 40-50% in all business markets and 55-60% in the Domestic market.

Other factors will be assessed to determine at which end of the range, deregulation occurs including entry barriers such as brand power and ease of customer switching. For example, if the ESB brand was not present in the supply market, it is likely that the Commission would feel that competitive conditions in the supply market had improved and take a view that the higher end of the thresholds should be chosen. This paper also suggests a range of options for assessment criteria, proposals on how price controls should be removed and suggests additional measures around consumer protection.

As a result of supply deregulation ESB may wish to re-integrate its supply and generation businesses. However, before the specific issue of reintegration is progressed further, the SEM Committee will take a view as to whether this falls within its jurisdiction or not. If the matter is not considered to be an SEM Committee matter, then the Commission will most likely publish a further consultation paper on this issue in the near future. Regardless of the issue of jurisdiction, the Commission notes the importance of liquidity for a fully competitive supply market and if reintegration was to be permitted in the future, the Commission would require commitments from ESB with respect to ongoing contract liquidity.

Finally this paper considers the interim measures that will be considered until such time as the markets are deemed to be competitive, including the recommendations from the review of correction factors (which address any over-recovery or shortfall made by the Public Electricity Supplier, ESB PES in the previous year) and tariff structures and also the upcoming supply price control review. The Commission notes that while there will be benefits to consumers arising from fully competitive markets, there are some risks that, after de-regulation, competition may not flourish to the extent anticipated and market power risks could emerge, either from one supplier or a group of them. The Commission is seeking views as to whether, and, if necessary how, any *ex post* monitoring of the market should be used.

The proposals set out in this paper represent the initial views of the Commission on the necessary steps to deregulate the Irish retail electricity market. The Commission notes that any implementation of recommendations arising from this consultation process may require changes to legislation, which is ultimately a decision for the Minister for Communications, Energy and Natural Resources and the Oireachtas. The Commission would stress that any views expressed in the paper are preliminary in nature and that it is committed to a full consultation on the issues. The Commission looks forward to receiving the views of all stakeholders and interested parties.

Table of Contents

Executive Summary 3

1.0 Introduction 9
1.1 The Commission for Energy Regulation...9
1.2 Purpose of this paper...9
1.3 Background Information...9
1.4 Structure of this paper..10
1.5 Responding to this paper 11

2.0 Regulatory Framework in Ireland 2009..12
2.1 Introduction...12
2.2 Regulatory Controls in the Wholesale Market 13
2.3 Regulatory Controls of Networks..14
2.4 Regulatory Controls on the Retail Market...15
2.4.1 ESB Customer Supply...15
2.4.2 ESB Independent Energy 17
2.5 Summary 18

3.0 Development of Retail Competition 19
3.1 Introduction...19
3.2 Transition to Competition 20
3.3 Assessment of Competition 23
3.3.1 Calculation of Market Share Thresholds..23
3.4 Summary 24

4.0 Relevant Market Definition 25
4.1 Introduction...25
4.2 Is there a Single Market for Electricity and Gas?..25
4.3 Is Northern Ireland and Ireland in the same Relevant Geographic Market for the Supply of Electricity? 26
4.4 Relevant Retail Markets for Electricity..27
4.4.1 Are there separate relevant markets for business and domestic customers? 28
4.4.2 Are all business customers in the same relevant retail market?.....................30
4.4.3 Are all SME business customers in the same relevant retail market? 32
4.4.4 Are Public Lighting & Unmetered customers part of a relevant business market?..34
4.4.5 Are all domestic customers in the same relevant retail market? 34
4.5 Summary 38

5.0 Relevant Market Analysis 40
5.1 Introduction...40
5.2 Assessing Competition in the Relevant Markets 40
5.3 Competitors in the Retail Electricity Market..41
5.4 Market Share 41
5.4.1 Relevant Market I – Market for Large Energy Users 42
5.4.2 Relevant Market II - Market for Medium-Sized Business Customers 43
5.4.3 Relevant Market III - Market for Small Business Customers..........................45
5.4.4 Relevant Market IV – Market for Domestic Customers 46

5.4.5 Market Concentration 48
5.5 Summary 48

6.0 Other Criteria for Determining a Competitive Market 50
6.1 Introduction 50
6.2 Barriers to Entry, Expansion and Exit 50
6.2.1 Sunk Costs 50
6.2.2 Switching 51
6.2.2.1 Total Customer Churn 52
6.2.2.2 Domestic Customer Churn 53
6.2.3 Non Discriminatory Network Access 54
6.2.4 Branding 55
6.2.5 Access to Wholesale Product 56
6.3 Summary 58

7.0 Determination of Competitive Markets 60
7.1 Introduction 60
7.2 Criteria for a Competitive Market 60
7.3 Market Status Review 63
7.4 Summary 65

8.0 Proposed Changes to the Regulatory Framework – Removal of Price Controls 66
8.1 Introduction 66
8.2 Removal of Price Controls for Business Customers 66
8.3 Removal of Price Controls for Domestic Customers 68
8.4 Regulatory Monitoring 69
8.5 Summary 70

9.0 Market Liquidity and the Regulatory Framework 72
9.1 Introduction 72
9.2 Market Liquidity 72
9.3 Reintegration of ESB 72
9.4 Summary 73

10.0 Consumer Protection 74
10.1 Introduction 74
10.2 3rd Package Requirements 74
10.3 Special Protections on Tariffs 75
10.4 Summary 76

11.0 Interim Regulatory Arrangements 77
11.1 Introduction 77
11.2 Tariff Regulation 77
11.3 North / South Retail Market Harmonisation Programme 79
11.4 Summary 79

12.0 Conclusions and Next Steps 80
12.1 Summary 80
12.2 Next Steps 81
12.2.1 Timetable of Implementation 82

Appendix A – List of Substantive Questions 83
Appendix B – Breakdown of DUoS Categories. 87

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 sector's. 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 additional powers in relation to gas and electricity 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 view of the public and the CER's stakeholders with regard to a 'Roadmap' for deregulation of end-user prices. 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, customers and all interested parties. The Commission commits to considering all views equally and affording each respondent the opportunity to clarify any issue raised in this paper.

The Commission proposes that the roadmap will set out the milestones for when regulatory practices will change in line with developing competition in relevant sectors of the market. The roadmap will also address any additional regulatory remedies that would apply, the transitional arrangements and provisions for ongoing regulatory monitoring.

1.3 Background Information

In its paper End-user Energy Price Regulation[1] ERGEG stated that all markets should move towards removing price controls and that regulators should publish a 'roadmap' outlining how they intended to do so. ERGEG stated that end-user price regulation in electricity and gas markets distorts the functioning of the

[1] ERGEG: "End-user energy price regulation An ERGEG Position Paper": E07-CPR-10-03

market and jeopardises both security of supply and the efforts to fight climate change. Therefore end-user price regulation should be abolished, or where appropriate, brought into line with market conditions. This road map should contain specified and attainable steps to establish the necessary conditions for a well functioning market with no need for end-user price regulation. Where appropriate a transition periods towards well functioning competition (for the co-existence of regulated and market prices) may be necessary to protect customers from potential abuses of dominant positions.

1.4 Structure of this paper

- **Section 2.0** outlines the regulatory framework in Ireland at present including the regulatory controls placed on transmission and distribution, the wholesale market and the retail market.

- **Section 3.0** outlines the changing nature of the Irish electricity market and how the regulation of this market must change to suit these circumstances.

- **Section 4.0** defines the relevant retail electricity markets.

- **Section 5.0** provides an analysis of how competition is developing in each of these markets looking at the number of suppliers and market share.

- **Section 6.0** examines the broader competitive environment including barriers to entry, expansion and exit.

- **Section 7.0** proposes competitive thresholds for the removal of price controls and bi-annual review of the relevant markets.

- **Section 8.0** proposes options for how the price control should be removed.

- **Section 9.0** proposes changes to the regulatory framework in order to ensure that market liquidity is maintained.

- **Section 10.0** outlines changes to be made in order to ensure that the customer remains protected in a deregulated market.

- **Section 11.0** outlines the possible regulatory arrangements that will be required in the interim until the market is deregulated.

- **Section 12.0** sets out the conclusions and outlines the next steps in the roadmap process.

- **Appendix A** contains a list of substantive questions the Commission invites respondents to answer.

- **Appendix B** provides a breakdown of the ESBN DUoS categories.

1.5 Responding to this paper

Interested parties are invited to comment on the issues raised in this paper this consultation paper by close of business on ***Monday 1st February 2010***.

As responses will be published in full on CER's website, respondents should include any confidential information in a separate Annex. Submissions on this paper should be forwarded, preferably in electronic format, to:

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2.0 Regulatory Framework in Ireland 2009

2.1 Introduction

In July 1999 the Electricity Regulation Act[2] was enacted into law to facilitate the opening of the Irish electricity market and to provide for the establishment of a regulatory body; the Commission for Energy Regulation. This involved the liberalisation of the market in order to encourage the entry of competition and new investment. Market rules were established for both a wholesale electricity market and a retail electricity market, while licensing processes and procedures were introduced for all market participants. As part of the process of liberalisation the Electricity Supply Board (ESB), the state-owned incumbent, was required to introduce business separation and ring-fencing into each of the key functions of generation, networks and supply, although all of the business units are still managed within the ESB Group. The Commission has the function to advise the Minister on the development of the electricity industry per section 9(1)(e) of the Electricity Regulation Act 1999 however, any proposals in relation to changes to the regulation of the PES tariffs would require amending or repealing legislation to the relevant regulations of SI 60[3] of 2005 which is a matter for the Minister for Communications, Energy and Natural Resources.

As well as these founding pieces of legislation, the functions and duties of the CER have been altered and expanded significantly by legislation transposing EU directives into Irish law. Some of the most significant such pieces of legislation are Electricity (Supply)(Amendment) Act of 2004[4] and SI 60 of 2005. Regulation 3 of SI 60 requires the Commission to consider proposals from ESB operating as Public Electricity Supplier (PES) in relation to tariffs and their underlying costs. In accordance with Regulation 3, the Commission may issue directions to ESB ("the Board") in relation to the charges for electricity ("tariffs") to final customers who are not being supplied in accordance with a licence issued under paragraph (b), (c), or (d) of Section 16(1) of Statutory Instrument No.60 of 2005. Regulations 18 and 19 of SI 60 formally set out the role of ESB PES in relation to its duty to supply and the tariffs it may charge for such supply. Any proposals in relation to changes to the regulation of the ESB PES tariffs would require a Ministerial decision to require changes to legislation the legislation.

The regulatory framework in Ireland has evolved over the past 10 years to establish a liberalised market, fully open to competition, with licensing and regulatory controls in place which govern the markets for generation, networks and supply. These are discussed in the following sections.

[2] Electricity Regulation Act, 1999
[3] European Communities (Internal Market in Electricity) Regulations 2005: SI 60, 2005
[4] Electricity (Supply)(Amendment) Act, 2004

2.2 Regulatory Controls in the Wholesale Market

In 2006 the Irish and British governments signed the Memorandum of Understanding[5] which enabled the introduction of the SEM on 1st November 2007. The SEM is managed jointly by the CER and NIAUR.

The SEM consists of a gross pool, into which all electricity generated on or imported into the island of Ireland must be sold, and from which all wholesale electricity for consumption on or export from the island of Ireland must be purchased. Under the gross pool arrangements, a single System Marginal Price (SMP) for electricity is determined on a half hourly basis based on generators' submitted bids, technical characteristics of the plant and the system demand target to be met. Generators that are scheduled to run, as well as those whose capacity is available for dispatch, are paid a capacity payment. The rules governing the operation of the SEM are set out in the Trading and Settlements Code (T&SC)[6]. Fig 2.1 below illustrates how the SEM market functions, and interacts with the retail markets.

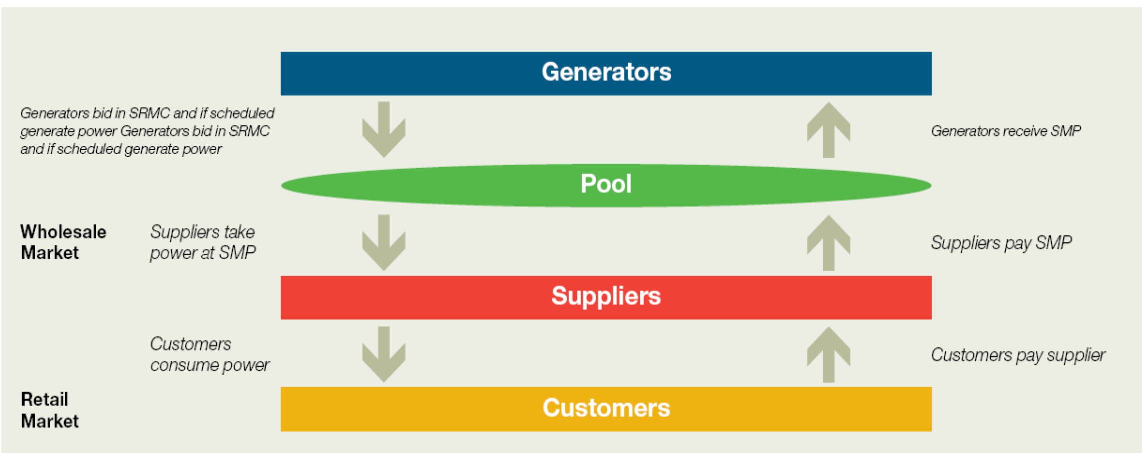

Figure 2.1 Illustration of the interaction between the wholesale SEM Market and the retail market.

ESB Power Generation

ESB Power Generation (ESBPG) is a ring-fenced business unit within the ESB Group. As with any other generator on the island (greater than 10MWs), ESBPG is required to sell all of its output into the SEM and it receives the SMP for the generation units that are scheduled to run in any half hour period.

[5] Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland
[6] Single Electricity Market (SEM) Trading and Settlement Code Version 2.0: AIP/SEM/07/224

As part of the development of the SEM a robust market power mitigation strategy [7]was put in place to prevent generator market power being abused or distorting the SEM. The major focus of this strategy comprised the imposition of bi-lateral agreements, or Directed Contracts (DCs), on generators who potentially have significant market power such as ESBPG and also the Power Procurement Board (PPB) in Northern Ireland. Directed Contracts are key to the market power mitigation strategy in the SEM, reducing the incentives for the market participants to submit bids above competitive levels, or otherwise withhold capacity, in order to influence current spot prices or future contract prices. Generators with market power are required to offer a portion of their output as Directed Contracts to all suppliers who wish to avail of it. In each of the past three years of operation in the SEM, ESBPG has been required to offer a suite of directed contracts to all eligible suppliers in the market (north and south).

In April 2007 the CER and ESBPG signed the "CER-ESB Asset Strategy Agreement". The objective of this agreement was to introduce a package of measures to reduce ESBPG's share of the all island electricity generation market to around 40% by 2010. In return ESB was granted permission to construct a new CCGT 430MW plant at Aghada, Co. Cork. As part of this strategy, in 2007, ESBPG agreed with the Commission to sell 1,300 MW of generation capacity and has done so.

ESBPG has also offered, on a voluntary basis, Non-Directed Contracts (NDCs) to all suppliers in the SEM through open auctions. During the NDC auctions in 2007, 2008 and 2009, ESBPG offered a range of hedging products for which all suppliers were free to bid, with the bi-lateral contracts being sold at the lowest clearing price. These financial instruments, the directed and non directed contracts for difference (CfDs), are essential risk management tools for suppliers. These arrangements are discussed further in section 6.2, but none of the proposals in this consultation paper suggest any change to current wholesale market rules.

2.3 Regulatory Controls of Networks

The transmission and distribution systems are owned by the ESB Group and are operated as separate monopoly networks businesses by Eirgrid Plc. and ESB Networks Ltd. The respective roles of each of the network companies are set out below. It should be noted that none of the proposals in this consultation paper suggest any change to current regulatory arrangements of the networks.

[7] Market Power Mitigation in the SEM Decision Paper, AIP/SEM/31/06

Transmission

The operation of the transmission network is licensed to Eirgrid since 2006. Eirgrid is a separate company to the ESB Group, and is wholly owned by the Minister for Communications, Energy and Natural Resources. EirGrid operates and maintains the transmission system as the Transmission System Operator (TSO) an independently licensed entity and provides services to generators and market participants in an impartial manner. In addition to this it is responsible for developing key infrastructural projects such as East-West Interconnector. As a licensed monopoly, Eirgrid's costs and charges are regulated by the Commission.

Distribution

The operation of the distribution network is licensed to ESB Networks Ltd. (ESBN), a legally independent subsidiary of the ESB Group. ESBN is licensed as the Distribution System Operator (DSO) and is responsible for providing connections to customers, meter readings, fault resolution, and managing retail market data on an impartial basis. ESBN also manages the transmission assets which are owned by ESB and ensures that the transmission infrastructure is developed and maintained in accordance with the requirements set down by Eirgrid. As a licensed monopoly, ESBN's costs and charges are regulated by the Commission.

2.4 Regulatory Controls on the Retail Market

All suppliers of electricity operating in the retail market in Ireland are licensed by the CER under Section 14 of the Electricity Regulation Act, 1999[8]. The supply licence permits a supplier to supply electricity categorised by source; Green, CHP and Generic (Brown) licences are awarded. The two ESB-owned supply entities; the incumbent mass market supplier ESB Customer Supply (ESBCS) and ESB Independent Energy (ESBIE) also have additional licence obligations. These retail regulatory controls range from regulated from price controls, risk management and universal service obligations on the incumbent to market restrictions on the independent company and explicit ring-fencing between the two regulated and unregulated businesses.

2.4.1 ESB Customer Supply

ESBCS is the designated Public Electricity Supplier[9] (ESB PES). The ESB PES licence imposes a number of specific licensing conditions in a range of areas which would not apply to other suppliers operating in the retail market. Some of the key licence conditions and restrictions which apply to ESB PES operating as the PES supplier are set out below.

[8] Electricity Regulation Act, 1999, Part III, Section 14 (1) (b)

[9] Interim Public Electricity Supply License to Electricity Supply Board, CER/06/073

Regulated Revenue & Tariffs

- Allowed Revenue
  The Commission imposes revenue controls on ESB PES through multi-year price controls[10]. Revenues are then reviewed annually to set out an efficient level of revenue that can be recovered by the business from its customers in a particular operating period.

- Regulated Tariffs
  Tariffs are (normally) set on an annual basis with the regular tariff year running from 1st October to 30th September. ESB PES makes proposals to the Commission in relation to regulated tariffs to be charged for the supply of electricity to all ESB PES customers. The Commission reviews the submission in detail to ensure that the tariffs are fair and reasonable for consumers and reflective only of efficiently incurred ESB PES costs.

Business Restrictions

- Accounting Separation
  ESB PES's accounting and reporting arrangements must be separate from other ESB functions. Cross-subsidies between ESB PES and other ESB business units are prohibited.

Economic Purchase Obligation

- Risk Management
  A key regulatory control on ESB PES relates to the Economic Purchase Obligation (EPO). The EPO criteria requires that ESB PES purchases electricity and contracts in a manner that is fair, transparent and non-discriminatory while at the same time not overpaying for its electricity/contracts, potentially by contracting with the incumbent generation arm. Absent of regulation, should ESB PES pay too much, its customers will pay too much for their electricity.

- Hedging Statements
  ESB PES is required to produce a Hedging Policy, and Methodology Statement including procurement principles. By reviewing ESB PES's performance in the purchasing of contracts and approving these statements the Commission aims to ensure that ESB PES operates to a clear set of guidelines when deciding whether or not a particular purchase is viewed as being EPO compliant. ESB PES's performance is subject to external audit.

[10] "Direction to ESB PES (Public Electricity Supplier) on Allowable Costs 2006 – 2010 by the Commission for Energy Regulation" CER/05/164

Non- Discrimination Obligation

The ESB PES licence, states that the Licensee in supplying or offering terms for the supply of electricity to final customers should not show undue preference or exercise undue discrimination to any person (or class of persons) within such market, or set terms which are unduly onerous.

Universal Service Obligation & Supplier of Last Resort

- Universal Service Obligation
  ESB PES is designated as having a Universal Service Obligation and under the terms of its licence it has a duty to supply any final customer who wishes to be supplied, and as soon as is reasonably practicable.

- Supplier of Last Resort
  ESB PES is designated[11] as being the Supplier of Last Resort which requires it to supply final customers where another licensed supplier, with whom final customers have a supply contract, ceases or fails to supply electricity to those final customers in accordance with its contractual obligations

Error Supply Unit

ESB PES is currently designated as the Error Supply Unit (ESU) and it picks up the jurisdictional balancing volumes caused by errors in the systems based on profiling, theft etc.

2.4.2 ESB Independent Energy

ESBIE was established in January 2000 to offer an alternative supply service to Industrial, Commercial and Business energy users. ESBIE operates as a vertically integrated business, owned by ESB International (ESBI), which is an unregulated business within the ESB Group. ESBI's generation assets include Synergen in Dublin, and Coolkeeragh in Derry, Northern Ireland.

A relatively unrestricted and independent ESBIE was seen as a potential barrier to independent suppliers entering the market, where ESB PES already served in excess of 99% of the domestic market, as there was a risk of ESB foreclosing the market. Therefore ESBIE has a specific condition in its supply licence which prohibits it from serving customers who consume less than 225 GWh/year[12].

[11] The SOLR role was originally offered out to all suppliers but none were interested in taking that role: Supplier of Last Resort in Electricity Decision Paper & Response to Comments: CER/06/006
[12] "Electricity Supply License Granted to ESB Independent Energy Limited," P21: AIP-SEM-07-469

2.5 Summary

Within the retail market, the incumbent supply company, ESB PES, continues to be fully regulated by the CER, most notably in terms of its allowed revenues and tariffs. It is the continued application of these price controls, and other supporting remedies in the retail market that is at the core of this review. Having summarised the controls currently in place, the next section of this paper considers the original aims of regulation in imposing these controls and how to determine if they have been achieved, either in part or in whole, and if it is appropriate to move to a new form of regulation. The proposals set out in this review are of course without prejudice to the functions and duties of the CER as set out in legislation. Any recommendation arising from the consultation process would be presented to the Minister for review as any changes to the current legislation could only be brought about by amending or repealing legislation which is a matter for the Minister.

3.0 Development of Retail Competition

3.1 Introduction

One of the key objectives of regulation is to promote and secure effective market competition in the interests of customers. In the early stages of market liberalisation, the primary regulatory concerns are preventing the incumbent from extracting economic rents from consumers and ensuring that non-price discrimination does not prevent competitive entry. Where a market is not effectively competitive a supplier in a dominant position is able to act independently of competitors and consumers. Once the market becomes effectively competitive no supplier would be able to extract economic rents to the detriment of end customers.

Price controls are imposed on incumbents to serve as a proxy for competition in a market, encouraging new entrants and protecting consumers. As the regulatory environment matures and competition emerges from underneath the regulatory umbrella the concern moves away from control of excessive pricing towards possible exclusionary pricing by means of margin squeezes and below-cost selling. An important focus of regulatory concern in the retail market is then the incentive on the incumbent to engage in anti-competitive tactics that are intended to weaken or damage new entrants. However as the market develops and becomes more competitive, the presence of regulated prices can ultimately become a constraint to the development of full competition where price controls prevent the ex-incumbent from freely competing and therefore introduce inefficient distortions and should be removed.

In its Sectoral Inquiry[13] in 2007, the European Commission set out its concerns with regulated prices, pointing out that if regulated tariffs are kept low, new entrants are excluded from the market and market players will not invest in new capacity which is detrimental to security of supply. The European Commission pointed out that it would be important to assess the impact of regulated tariffs in the liberalised market on the development of competition.

Further to this enquiry, the European Regulators Group for Electricity and Gas (ERGEG) has conducted two reviews of the status of end-user price regulation and stated that fully open markets with well-functioning competition cannot in the long term coexist with regulated end-user energy prices.

In its position paper on end-user price regulation[14] ERGEG advocated that;-

[13] EC Sectoral Enquiry on Competition in Gas and Electricity Markets: SEC(2006)1724
[14] End-user energy price regulation An ERGEG Position Paper: E07-CPR-10-03

- Member States who continue (after 1 July 2007) to offer regulated end-user prices should urgently progress towards a competitive market. The "transition period" with regulated prices should be a predetermined fixed period and should be as short as possible.

- It is essential that those countries, who during a transition period continue to have regulated end-user tariffs, draw up an individual road map towards a competitive market without end-user price regulation.

ERGEG later noted[15] that a well-functioning market needs well-informed and active customers, and strong independent regulators who monitor retail and wholesale markets. Consumers can force a supplier to deliver a quality service at the best price by the credible threat of moving their business to another supplier.

The Commission agrees with ERGEG that the move to competitive markets is a good thing for consumers and will seek to effect the transition from regulated prices as soon as is appropriate to do so. It should also be noted that this is in the context of the CER's statutory mandate to promote competition[16].

3.2 Transition to Competition

In his report on the impact of maintaining price regulation[17] Professor George Yarrow states that the process of transition from regulation to market liberalisation can be summarised in three phases;

1. Pre-Competitive Markets

In the pre-competitive markets, market entry is just occurring. Incumbents enjoy significant inherited advantages in terms of established brand and customer base.

2. Established Competition (emerging competitive markets)

Entrants who have survived or begin to gain (or have gained) established reputations, in particular by winning the trust of large numbers of consumers in the market. Incumbents' market power is significantly reduced, although incumbents would still be judged to be dominant, and possibly strongly dominant.

3. Effective Competition (competition developed fully)

Competition is deemed to be effective when rivalry amongst suppliers is intense exerting strong constraining effects on the behaviour of all firms within the market.

[15] ERGEG 2008 Status Review of the Liberalisation and Implementation of the Energy Regulatory Framework C08-URB-15-04 2008

16 Electricity Regulation Act, 1999, Part II, Section 9 (4) (a)

[17] "Report on the impact of maintaining price regulation" Professor George Yarrow, Regulatory Policy Institute, Oxford, UK. January 2008

Transition through these phases of competition will involve some intermediate steps, with the role of the regulator gradually changing from ex-ante price regulator to ex-post market monitor.

UK Experience[18]

Utilities were privatised in the UK in 1990. These privatised utilities retained their statutory monopoly rights until the liberalisation of the market began in 1998 and was completed in 1999, opening the market up to competition. Price caps were put in place to prevent over-pricing by utilities but by spring 2002, these price caps had been removed and the market was fully de-regulated.

Ofgem, the UK's energy regulator, conducted a survey in 2002 while the caps were still in place. It was found that over the period leading to full-deregulation that most customers were aware that there were competing suppliers in the market. Customers on lower incomes switched at a similar rate to those on higher incomes and that while older customer switched at a lower rate than their younger counterparts, there was still a considerable rate of switching among older people.

In terms of electricity prices, retail prices declined in real terms following deregulation to the period Q3 2003. However, wholesale prices also declined over this period and perhaps it would have been possible that retail prices could have fallen more. This may be explained by suppliers pursuing gas customers at the expense of electricity customers in order to secure lucrative 'dual-fuel' accounts.

In the long term however, competition in the UK retail electricity market has proven to be of benefit to customers in terms of pricing. In its June 2007 report, Ofgem indicated that price rises since 2003 had been lower than what the price probably would've been if the regulator was still setting a price cap. The report also found that suppliers were also offering a greater variety of products to customers than was previously the case, allowing greater choice.

Other Jurisdictions

The experience of deregulation in other countries is less relevant to the Irish market than the experience in the UK as the structures of those markets differs more significantly. However, there are valuable lessons to be learnt. Sweden, Norway and Texas, are further examples of the observation that deregulation leads to greater choice for consumers. In each of these jurisdictions, consumers were offered an array of new tariffs as competition increased. It is fair to say that deregulation is likely to benefit Irish consumers with greater choice.

[18] The information in this information box is drawn from: "Report on the impact of maintaining price regulation," Professor George Yarrow, Regulatory Policy Institute, Oxford, UK. January 2008

Deregulation in the US states of Maryland and Illinois illustrate another relevant point. When the retail markets were deregulated there, the price of electricity rose as much as 70%. This was due to the regulated price of electricity not reflecting the actual cost of electricity. The utility BGE in Maryland estimated that the regulated prices for electricity in 2006 immediately prior to deregulation, were actually below the 1993 price. The Commission would not expect this outcome in the Irish market as ESB PES tariffs are approved on cost reflective principles.

Since liberalisation of the electricity market the Commission has endeavoured to provide consumers with choice by ensuring that market participants have non-discriminatory access to the transmission and distribution networks, the availability of upstream product through the development of the SEM, and that the appropriate price controls were in place to constrain the market power of the incumbent supplier. This process has been successful in developing an environment for sustainable competition as is apparent through:

• a significant reduction in ESB PES market shares;
• significant levels of customer switching; and
• the number of new entrants that have entered the Irish retail electricity markets.

YEAR	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009[19]
ESB PES	94%	78%	72%	68%	65%	59%	54%	53%	53%	41%
ESBIE	1%	10%	10%	9%	9%	12%	15%	16%	15%	16%
Energia	0%	4%	9%	12%	13%	16%	16%	17%	17%	17%
Airtricity	0%	1%	2%	3%	4%	5%	4%	4%	5%	10%
BGE	0%	1%	4%	6%	7%	8%	8%	8%	8%	14%
Others	4%[20]	7%*	2%	2%	2%	1%	3%	2%	3%	2%

Table 3.1 Total Market Share (GWh) 2000 - 2009

Since the electricity market was liberalised, ESB PES's market share (for the electricity retail sector as a whole) has been steadily eroded. Table 3.1 below shows the market share by percentage of load per supplier since 2000 and demonstrates a progressive reduction in the incumbent's overall market share. There was an initial sharp decline in ESB PES's market share from 2000, which then levelled out into a more gradual decline between 2002 and 2006.

[19] 2000-2008 refers to the market share of suppliers at year end, 2009 refers to the market share of suppliers at end August 2009.
[20] e-Power withdrew from the market in 2002

The decline in market share begins to ease off in 2006, falling only a further 1% from 2007 - 2008. However the entrance of Airtricity and BGE into the domestic electricity market in 2009 has had a dramatic impact on overall market share in the first half of 2009.

Given that all segments of the market are open to competition since 2005 and that there is a significant increase in the level of market activity, the Commission considers that it is timely to review how the regulatory framework should evolve in a more competitive environment.

3.3 Assessment of Competition

In order to assess the level of competition in the Irish retail market, it is necessary to first identify the relevant markets, determine the level of competition within those markets by looking at a range of qualitative and quantitative measures, and finally applying or removing appropriate remedies to those markets e.g. the removal of a price control where a market is found to be effectively competitive. The Commission is proposing that for each relevant market it will review the following; the number of suppliers active in a particular market, individual market shares and barriers to entry, expansion and exit.

3.3.1 Calculation of Market Share Thresholds

One of the key indicators that regulators consider when reviewing the level of competition in a market is the market share of the incumbent and the competing suppliers in the market. In the telecoms sector, regulatory practice regarding decisions on the designation of Significant Market Power will normally find that where the undertaking under review has a market share above 40% it has a dominant position. However the guidelines[21] for the determination of Significant Market Power also state that "*a dominant position is found by reference to a number of criteria and its assessment is based, as stated above, on a forward-looking market analysis based on existing market conditions*". The guidelines also refer to the case where an undertaking is gradually losing market share, that this may mean that the market is getting more competitive. This implies that the assessment of dominance should not be limited to an ex-post review.

In the United Brands[22] case, the European Court of Justice found that the dominant position relates to a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained in the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers.

[21] Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services: 2002/C 165/03

[22] Judgment of the Court of 14 February 1978. - United Brands Company and United Brands Continental BV v Commission of the European Communities. - Chiquita Bananas. - Case 27/76

Within other the energy markets regulators have made decisions regarding the removal of tariff regulations which look at market share as an indicator amongst other criteria. In the UK Ofgem opened domestic electricity market on a region by region basis from 1998 – 2002. Over this period Ofgem consulted on its quantitative and qualitative reviews of the relevant markets, removing regulated tariffs from the regions while the incumbent still maintained a market share in the range of 64% - 83% of customers. While market shares were high it was clear that they had fallen rapidly, and by considerable amounts from the 100% legacy position. The UK review also looked at customers' experiences, customer switching behavior, price and non-price offers, entry and exit of suppliers and barriers to entry. It is also important to note that at that time some of the incumbent generation legacy contracts were coming to an end.

3.4 Summary

The Commission is reviewing the current form of regulation with a view to evolving the regulatory framework to meet the changing needs of the market and consumers. While price regulation currently serves as a proxy for competition the changing competitive conditions in the market could mean that this may no longer be appropriate. It is widely noted in the literature that regulators seek to adopt more flexible approaches to regulation as the market transitions to full competition. This European Commission and ERGEG strongly advocate that this transition should happen as quickly as possible. The Commission agrees with this approach but only when it is appropriate to do so.

The Commission is proposing to review the level of competition in the retail market with a view to setting out a roadmap for deregulation, as advocated by ERGEG, which is appropriate to a more competitive retail market. This review will identify the relevant markets, consider a range of qualitative and quantitative market indicators and set out proposals for the removal of price controls where appropriate.

Q1. Respondents are invited to comment on the proposal to review the market and define a roadmap for deregulation of the retail electricity market. Are you in favour of the proposal? Do you think this is the right time? Outline reasons for agreement or disagreement.

4.0 Relevant Market Definition

4.1 Introduction

The Commission considers that the wholesale supply of electricity, the transmission grid, the distribution grid and the retail supply of electricity to be separate product markets. While the regulatory arrangements in place for the wholesale markets and networks access provide the context for a competitive retail market, this review deals with the regulatory controls as applied to the retail market for electricity only.

In order to determine the level of competition within the Irish retail market, and to identify if a change in the regulatory framework is appropriate, it is necessary to first define the relevant product markets. Market definition procedures are designed to identify in a systematic way the competitive constraints that exist; they do so in a way which also facilitates subsequent market analysis procedures. According to the European Commission[23] a relevant product market comprises all products or services that are sufficiently interchangeable or substitutable with its products, not only in terms of the objective characteristic of those products, their prices or their intended use, but also in terms of the conditions of competition and/or the structure of supply and demand for the product in question. In essence, this leads to a definition of the market's boundaries. A key question for the review, therefore, is the extent of the boundaries in light of issues of substitution possibilities.

Market definition must also take into account the specific conditions at play in the market. The process involves considering constraints resulting from demand and supply issues (and indeed their interaction) to consider overall substitutability. If demand and supply issues suggest a lack of current or potential substitutability between different types of product, the overall market will be more tightly defined. If substitutability or its potential exists, a broader definition may be appropriate. The competitive position of each relevant market can then be considered.

4.2 Is there a Single Market for Electricity and Gas?

When considering the retail energy markets Irish consumers can avail of two primary products: gas and electricity. While electricity is a ubiquitous service, available to every customer in the country, the gas network does not extend to full national coverage. The European Commission has determined[24] that gas and

[23] Commission Notice on the definition of relevant market for the purposes of Community competition law: Official Journal C 372 , 09/12/1997 P. 0005 - 0013
[24] Notification of 25.07.2002 pursuant to Article 4 of Council Regulation No 4064/89: Case No COMP/M.2890 - EDF / SEEBOARD

electricity are in separate product markets on the basis that consumers cannot readily switch between them without significant outlay of expenditure to modify equipment or to purchase new equipment. Furthermore gas and electricity cannot be considered as functional substitutes, as they cannot be used interchangeably for the same purposes. Therefore, for the purposes of this review, the Commission considers that gas and electricity are separate products and not within the same relevant market.

The Commission notes that from the supply side, there are a number of retailers that operate in both the gas and electricity markets. Given the energy market crossover, the Commission expects that a number of suppliers may soon develop ‘dual fuel’ offerings with gas and electricity product bundles. However, this does not imply that gas and electricity can be considered in the same competitive market.

While the Commission is proposing to exclude gas from the scope of this review, the retail gas market will be subject to a separate review when an adequate level of competition has emerged. At present the competitive conditions within the gas market are not comparable with those in electricity.

Preliminary View *This review is focussed exclusively on the retail market for electricity.*

4.3 Is Northern Ireland and Ireland in the same Relevant Geographic Market for the Supply of Electricity?

A relevant geographical market comprises the area in which the market participants concerned are involved in the supply and demand of products and/or services, in relation to which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different to those areas.[25] In its review of the retail market for calls[26], the Irish telecoms regulator ComReg also considered the area covered by network, and the existence of legal and other regulatory instruments.

This review is concerned with the potential changes to the regulatory framework that currently apply to the retail market for electricity in Ireland. Notwithstanding the implementation of the SEM, and the all-island wholesale market, there are currently two separate retail markets with different structures e.g. licensing regimes, retail market systems, metering infrastructure and tariffs. In the context

[25] Commission Notice on the definition of relevant market for the purposes of Community competition law: Official Journal C 372 , 09/12/1997 P. 0005 - 0013
[26] “Market Analysis: Retail Fixed Calls Markets,” Section 3.154:ComReg 04/95

of the SEM there have been a number of initiatives to harmonise the approach to the regulation of the retail markets in Northern Ireland and Ireland e.g. common licence obligations were introduced on both of the PES suppliers, North and South, which required them to publish a Hedging Policy Statement and the retail tariff year structure has been aligned.

In theory there are no barriers to prevent a supplier from operating fully in both jurisdictions, and as such defining the retail market on an all-island basis. However, while the retail market systems in Ireland were implemented in 2005 with full market opening, the retail market in Northern Ireland was not fully opened to competition until 2007, and as a result there is a disparity between the development of competition in both jurisdictions. While the market is theoretically open to competition, in practice technical limitations related to switching systems constrain competition to the higher end of the Northern Ireland market. Therefore there is a uni-directional constraint between jurisdictions which means that suppliers in the North can compete unrestricted in all segments of the Irish market, but the same is not true in reverse. Work is underway to develop the retail systems in the North and to harmonise with the switching systems in place in the South, this work is expected to be complete by Q1 2012.

On the basis of this definition, the Commission takes the view that currently the relevant geographic market for the markets considered in this review is the State of Ireland. This definition of the geographic market will be reviewed again once the NI switching systems are fully developed.

Preliminary View

The geographic market for electricity is currently defined at national borders.

4.4 Relevant Retail Markets for Electricity

The electricity supply market is characterised by a very broad range of customer types. At one end there are fully liberalised industrial and commercial customers, consuming significant volumes of electricity. At the other end of the market there are highly regulated, domestic customers using significantly less electricity, by several orders of magnitude. As part of this review the Commission must consider if all of these customers are in the same relevant market.

The formal approach to market definition requires that all customers who are eligible to opt in or out of a market category in response to a small but significant price change. The theoretical framework for such consideration would be a full analysis of the possibilities of supply and demand side substitution e.g. would a hypothetical monopolist of supply in one market segment be potentially constrained by a hypothetical monopolist in another segment[27]. However as we've recognised in the geographical market definition actual competitive constraints can change the market definition. Having considered the supply and demand side effects the European Commission[28] has found that the supply of electricity to large industrial customers, small and medium commercial customers and residential customers were in separate product markets.

In terms of proposing the relevant markets for the supply of electricity, the Commission has taken a high level view of the potential for the economics of supply and demand to vary between the different customer groups including; the different stages at which different customer groups have become eligible for supply by independent suppliers, the possible variation in contract terms available to them and countervailing buyer power.

4.4.1 Are there separate relevant markets for business and domestic customers?

Firstly are business and domestic customers in the same relevant market? If we consider the top end and bottom ends of the market, then the initial view could be that industrial and commercial customers are vastly different. The supply and demand characteristics of these customer types are discussed further in the following sections.

<u>Demand</u>

(i) Customer Classification

There is a clear distinction between the largest industrial business and domestic customers based on their connection to the transmission or distribution network and the types of metering available to them. A list of DUoS connection categories is shown in Appendix A. All suppliers can, and do, distinguish business customers from domestics on that basis. There is however a wide range in terms of the scale of business customer operating in the market. In analysing the distinctions between business and domestics we have looked at the characteristics the largest business customers and domestics to compare the characteristics of supply and demand.

[27] It should be noted that analysis of the markets for electricity retail supply in this context presumes the absence of the regulation of the retail supply. It also presumes the presence of non discriminatory wholesale markets where suppliers can access wholesale energy.

[28] E.ON/MOL merger (Case No COMP/M.3696 E.ON/MOL)

(ii) Market Opening

As noted above, the business market was opened to competition in stages between February 2000 and February 2005. Since then, competition has progressively developed in this sector of the market, most notably the Large Energy Users (LEUs). In September 2006, the CER issued a direction[29] placing a restriction on ESB PES from supplying new or returning LEU customers. In 2007[30] the Commission, concluding that there was sufficient competition in this sector of the market, issued a further direction to remove LEU customers from fixed end user price regulation.

The domestic market has been open to competition since 2005, however there has only been any meaningful competition since February 2009 when BGE and Airticity entered.

(iii) Pricing

All LEU connections are metered on a quarterly hour basis which facilitates the detailed profile pricing. From 1st October 2007, in line with the opening of the SEM, ESB PES could only offer a Pool Price Pass Through Tariff (PPPT) to LEU customers. This linked the price paid by LEU customers for energy directly to the wholesale pool price in the SEM. There are two variants of the ESB PES PPPT tariff: Individual and Group. Independent suppliers are free to contract with LEU customers and at this level, these customers can access fixed term or variable length contracts indexed in part or in whole to wholesale prices; SEM SMP, international fuel etc.

Currently all domestic customers have non-quarterly hour meters which mean that detailed consumption profile data is not available. All suppliers have access to standard profile information which is used as the basis for billing customers, so that there is always a deviation from actual consumption. ESB PES does have some customers on a legacy ‘Residential Business’ tariffs but there are no real differences in the demand characteristics of these customers. In terms of domestic offers, most customers are on fixed annual tariffs with independent suppliers tending to discount against regulated tariffs, rather than competing by developing alternative, more innovative offerings.

(iv) Countervailing Buyer Power

At the top end of the market, there is a range of both suppliers and variation of offers, and LEU customers are at a scale where they may have the capacity to analyse their consumption profile with respect to more complex price offerings

[29] Commission Direction on Ending of Tariff Regulation for Large Electricity Users CER/06/167
[30] PES Restriction and Charging Arrangements for Large Energy Users in the SEM CER/07/149

and exercise countervailing buyer power to seek competitive offers elsewhere in the market.

Domestic customers do not have these opportunities and are unlikely to be able to exercise countervailing buyer power in response to a price change.

Supply

(i) Conditions of Supply
The conditions of supply are largely similar for all business and domestic customers in that suppliers need to procure electricity to serve the different categories of customers. There is however a marked difference in terms of sales and marketing to the business and domestic sectors.

(ii) Economics of Supply
However, there may be variations in the economics of supplying in the business and domestic sectors. Taking the extreme case of the LEU business customers when compared with domestics, it is useful to consider if a supplier of electricity to the LEU business market would seek to enter the domestic market and vice versa in response to a price increase. The cost to serve the domestic customers is higher per unit than for business, with increased requirements for customers care/service for the domestic market.

Suppliers have, until very recently, been slow to enter the domestic market This may be because regulated margins are relatively low (1.3%) - perhaps too low for new entrant suppliers to be able to develop a substantial range of innovative products that are attractive to customers and/or are generally too low to fund the new entrant costs associated with establishing a material supply business and attracting a sufficient number of new domestic customers.

Preliminary View
Large Energy Users are in a different relevant market to domestic customers.

4.4.2 Are all business customers in the same relevant retail market?

Having reached the preliminarily view that the market for business customers should be treated separately to domestics, the next question is whether all business customers are included in the same relevant market. As one moves from the high and medium voltages to the low voltage business customers, different characteristics emerge.

Demand

(i) Customer Classification

The largest business customers, LEUs are connected to the high voltage or transmission networks. The rest of the business market is connected to the low voltage network on a Low Voltage Maximum Demand Connection (LVMD) or a Low Voltage Non Maximum Demand Connection (LVNonMD).

(ii) Market Opening

The business market was opened to competition in stages between February 2000 and February 2005. Therefore the top end of the market is more developed in terms of competition and as such, fixed price controls were removed. At the lower end of the business market, the smaller SMEs are only recently seeing significant movement in terms of customer switching.

(iii) Pricing

As discussed all LEU connections are metered on a quarterly hour basis which facilitates the detailed profile pricing. The larger SME customers are also metered on a quarterly hour basis. Though the majority of business customers are metered on a non quarterly hour basis and therefore have much more rigid pricing structures. At the lower end of the business market many small business customers have relatively light demand and therefore they are subject to different pricing structures i.e. they do not attract Maximum Import Capacity (MIC) charges.

(iv) Countervailing Buyer Power

At the top end of the market, there is a range of both suppliers and variation of offers, and LEU and some large SME customers are at a scale where they may have the capacity to analyse their consumption profile with respect to more complex price offerings and exercise countervailing buyer power to seek competitive offers elsewhere in the market. The majority of the SME customers would not be in a position to avail of these opportunities and are unlikely to be able to exercise countervailing buyer power in response to a price change.

Supply

(i) Conditions of Supply

The conditions of supply are largely similar for all business customers in that suppliers need to procure electricity to serve the different categories of business customers in accordance with consumption level and profile. There is however a marked difference in terms of sales and marketing to the businesses at the high end of the market that may have dedicated energy managers and those with much lower consumptions levels, who may be more akin to domestic purchasers.

(ii) Economics of Supply
However, there may be variations in the economics of supplying different business customers. Taking the extreme case of the LEU business customers, it is useful to consider if a supplier of electricity to the LEU business market would seek to enter the small business market and vice versa in response to a price increase? The cost to serve small business customers is likely to be higher than for large business, with increased requirements for customers care/service similar to the mass domestic market.

Preliminary View
Large Energy Users are in a separate relevant market to SME customers

4.4.3 Are all SME business customers in the same relevant retail market?

Having proposed that LEUs are in a separate market to SME customers, we must then consider if all SMEs are in the same relevant market. There is significant overlap across the bulk of SME customers and the Commission notes that the key distinctions predominantly apply to customers at the top and bottom of the SME market.

Demand

(i) Customer Classification
As previously noted, there a large number of SMEs within the Irish economy, particularly at what would be considered the lower end of the SME range that have relatively light consumption demands. With reference to this and taking account of national circumstances, the SME market could be considered in two parts: medium sized businesses and small businesses. A typical medium, or LVMD, customer would:

- run a commercial or industrial premises, and
- have an MIC of more than 50kVA, and
- use relatively high volumes of electricity

Whereas a typical LVNMD customer would be a small commercial business such as a small office, shop or hairdresser and would have significantly lower consumption.

(ii) Market Opening

As above, the business market was opened to competition in stages between February 2000 and February 2005. Therefore the top end of the SME market is more developed in terms of competition and range of offerings from independent suppliers. The lower end of the business market, the SMEs, is only recently seeing significant movement in terms of customer switching.

(iii) Pricing

The larger SME customers, like LEUs, are also metered on a quarterly hour basis. Though the majority of business customers are metered on a non quarterly hour basis and therefore have much more rigid pricing structures. At the lower end of the business market many small business customers have relatively light demand and therefore they are subject to different pricing structures i.e. they do not attract MIC charges.

(iv) Countervailing Buyer Power

At the top end of the SME market, there is a range of both suppliers and variation of offers, and some large SME customers are at a scale where they may have the capacity to analyse their consumption profile with respect to more complex price offerings and exercise countervailing buyer power to seek competitive offers elsewhere in the market. The majority of the SME customers would not be in a position to manage these opportunities and are unlikely to be able to exercise countervailing buyer power in response to a price change.

<u>Supply</u>

(i) Conditions of Supply

The conditions of supply are largely similar for all medium sized and small business customers in that suppliers need to procure electricity to serve the different categories of customers. As above there are however differences in terms of sales and marketing to the largest of the medium sized business customers and the smallest business customers, who may be more akin to domestic customers.

(ii) Economics of Supply

There may be some variations in the economics of supplying medium and small business customers. Taking the case of the largest SME business customers, it is useful to consider if a supplier of electricity to such a customer would seek to enter the small business market and vice versa in response to a price increase? The cost to serve the lower end of the small business market is inevitably higher than for the top end of medium sized business, with increased requirements for customers care/service similar to that of the domestic market.

Preliminary View
For the purposes of this review, medium sized business customers are considered to be in a separate relevant market to small business customers.

4.4.4 Are Public Lighting & Unmetered customers part of a relevant business market?

Public lighting and unmetered supply applies to unmetered public lighting connections (streetlights) and other business connections (bus shelters, kiosks etc) with predictable loads up to and including 2kVA. Streetlights are turned on and off at times that are set in advance which means that consumption to be calculated without the need for a meter. Customers in this segment are largely public authorities and private developments.

This market was opened up to competition when full market opening occurred in February 2005. However, the market is practically uncontested and no independent supplier entered this market until Q2 2009. This supplier had secured a small number of customers in the market as of the end of August 2009. So while independent suppliers have not identified any structural or regulatory issues preventing them from entering this market, PES maintains the dominant market of the Public Lighting and Unmetered market. The ESB PES tariff for this market is regulated by the Commission.

This customer group could be considered as a separate category within the business markets described above but given the different nature of consumption profiles and that this segment has been practically uncontested to date, the Commission is proposing to deal with Public Lighting outside of the small and medium business markets. As with all the proposals in this review, the Commission is seeking the views of stakeholders on how public lighting & unmetered supplies should be addressed in the context of a deregulated market.

4.4.5 Are all domestic customers in the same relevant retail market?

Having reviewed the business markets and proposed that there are three separate markets for business (plus/minus Public Lighting) and another market for domestic. The final question which the Commission is considering is whether all domestic customers are in a single market of if there are multiple domestic markets that should be considered when reviewing competition.

Demand

(i) Customer Classification

The domestic market is concerned with the supply of electricity to all non-business residential customers. Urban and rural customers are further distinguished within the distribution network by their connection to the network, which is either a single or three phase. Domestic customers are further distinguished by the type of metering that they have installed at their premises, which can be either a standard 24 hour electromechanical meter or a double register ‘nightsaver’ meter which differentiates between consumption between the hours of 11pm to 8am in wintertime and 12am to 9am in summertime.

(ii) Market Opening

The entire domestic market was opened in February 2005.

(iii) Pricing

Pricing for domestic customers is not completely geographically averaged and therefore the higher network costs incurred to serve rural customers are reflected in higher standing charges. The Commission approves all ESB PES domestic tariffs which include; Urban Domestic 24 Hour, Urban Domestic Nightsaver, Rural Domestic 24 Hour, Rural Domestic Nightsaver. These customers are billed bi-monthly in arrears

(iv) Countervailing Buyer Power
There are no distinctions between domestic customers in terms of their ability to exert countervailing buyer power.

Supply

(i) Conditions of Supply

- Pre-Payment Domestic Customers

There are also approximately 30,000 ESB PES customers on a pre-payment type system. This is a relatively low number compared to other markets Northern Ireland or the UK. Approximately 31% of domestic customers are on pre-payment systems in Northern Ireland

The devices, known as Budget Controllers, have been installed for ESB PES customers at the end of a debt follow up cycle where it has been determined that the customers would otherwise have significant difficulty in managing their electricity payments. Once installed the Budget Controller assists customers in both the re-payment of outstanding debt and also budgeting their ongoing electricity payments. Physically the Budget Controller device sits in series between the Networks meter and the customer's distribution board. The Budget Controller is an asset owned by ESBN. There is a high cost to serve associated with the present technology as the Budget Controller must be recalibrated in situ following a price change.

At present these customers cannot switch between suppliers, however the Commission has engaged with industry to ensure that that additional pre-payment meters will be made available and that the appropriate inter-supplier business processes will be implemented to ensure that customers with pre-payment Budget Controllers can switch supplier. This should be available from November 2009.

(ii) Economics of Supply

- Credit Management

Within the wider domestic market segment, there are also likely to be a proportion of customers that present a credit risk to suppliers. ESB PES reports that it has approximately 200k customers that would fall into this category. It has been suggested that these customers are unlikely to switch to other suppliers (or be targeted by other suppliers), however there are no barriers, regulatory or otherwise to prevent those customers from switching if they chose to do so. The Commission has recently consulted on the issue of debt hopping and whether or not it would be appropriate to introduce a provision for losing suppliers to stop a customer from switching. A decision on this consultation is outstanding but it should be noted that the consultation paper only considered the possibility of measures to limit debt-hopping being applied for business customers.

- Low Consumption Customers

Within the domestic market segment there is a broad spectrum of customer consumption, with the average customer using approximately 4,500 KWh /year. There is however a significant proportion of the domestic customer base using <2,000 KWh / year, and approximately 22% of customers, representing approximately 4.5% of consumption, fall into this category[31]. Domestic customers in this category are not strongly incentivised to switch supplier as independent supplier offerings are currently pitched as a discount to the PES unit rates. Therefore there are limited potential savings to a low usage customer who will still attract the same fixed rate standing charges.

[31] It is estimated that there are 300,000 holiday homes in Ireland with very low annual consumption.

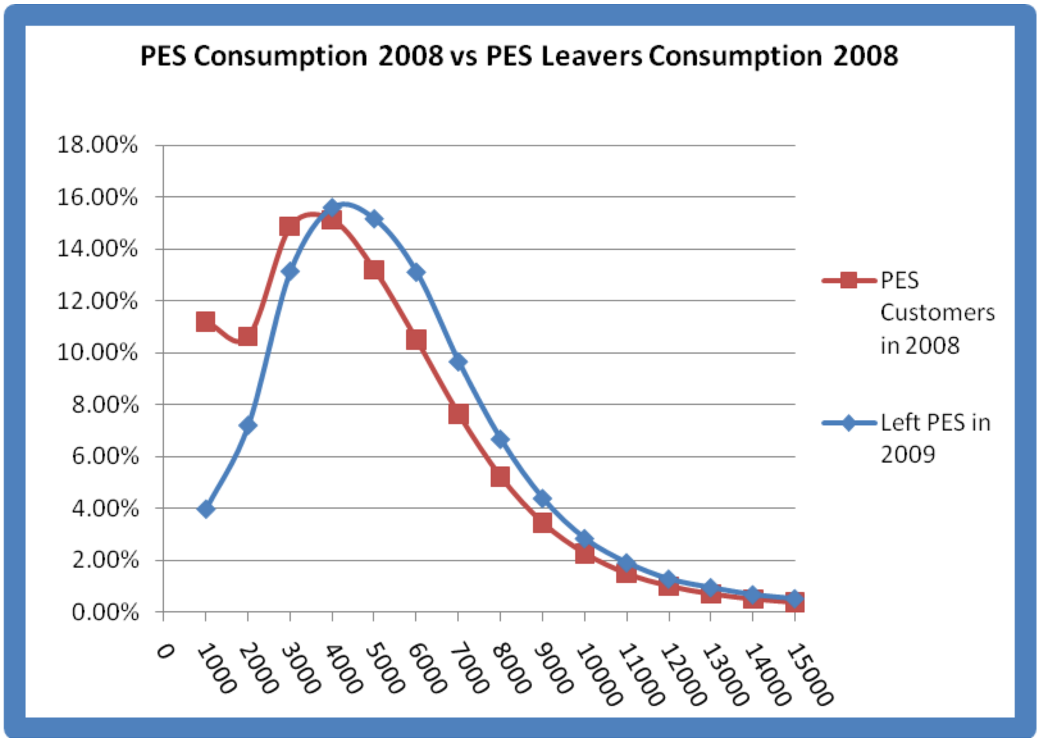

Figure 4.1 Consumption Profile of ESB PES Customers in 2008 Vs the Consumption Profile of Customers that have since left ESB PES in 2009.

Figure 4.1 shows the profile of customer consumption across the entire PES domestic customer base in 2008[32] and compares that with the corresponding 2008 consumption profile of customers that have actually switched away from PES in 2009. The graph shows that those who consume more electricity are more likely to move away from ESB PES. Even though 11.19% of PES's 2008 customers consumed 0-1,000 KWh in 2008, only 3.63% of them switched to an independent supplier. Furthermore, the average consumption within this bracket was 359KWh for PES in 2008 versus 441KWh for those who have since switched to an independent supplier.

Trends indicate that the combination of low consumption customers and those customers that fall into the credit risk category are not as likely to move supplier, and if excluded they would significantly reduce the eligible domestic market. However, it is still early days in terms of domestic competition and as previously stated there are no barriers, regulatory or otherwise, to prevent them from doing so. Therefore the Commission considers that all domestic customers should be considered to be in the same relevant market. As competition develops, further evidence on this issue may arise, which could allow for a re-examination of the matter.

[32] At end 2008 PES still supplied in excess of 99% of the domestic market.

Preliminary View
For the purposes of this review, all domestic customers are considered to be in the same relevant market.

4.5 Summary

There is EC precedence on market definition has been taken into consideration in defining product markets in the Irish context. The Commission notes that there is considerable overlap in the various customer markets but on balance considers the for the purposes of this review the market definitions for the retail supply of electricity are as follows;

(i) Electricity and gas are in separate retail markets
(ii) There is one geographic market for the supply of electricity, defined by national boundaries (Northern Ireland is not currently considered to be within the relevant geographic market)
(iii) For the purposes of this review the Commission will consider the competitive conditions in the following retail markets;

- Relevant Market I - Large Energy Users
  For the purposes of this review, large energy users (DG 7, 8, 9, 10 & TCON) are considered to be in the same relevant market

- Relevant Market II - Medium Sized Business
  For the purposes of this review, medium sized business customers (DG 6) are considered to be in the same relevant market

- Relevant Market III - Small Business
  For the purposes of this review, small business customers (DG 5) are considered to be in the same relevant market.

- Relevant Market IV – Domestic
  For the purposes of this review, all domestic customers (DG 1&2) are considered to be in the same relevant market

(iv) For the purposes of this review, public lighting and unmetered (DG 3 &4) are considered to be outside the business markets

Proposal 1 – The Commission is proposing that competition in the retail market for electricity should be reviewed on the basis of four relevant markets; Large Energy Users (DG 7, 8, 9, 10 & TCON), Medium-Sized Business (Low Voltage Maximum Demand – DG6) , Small Business (Low Voltage Non-Maximum Demand – DG5) and Domestic Customers (DG 1&2)

Q2. Respondents are invited to comment on the proposal to define 4 relevant markets for the supply of retail electricity. Are you in favour of the proposal? Outline reasons for agreement or disagreement.

Q3. Respondents are invited to comment on whether public lighting should be considered as a relevant market. How should it be treated in a deregulated environment? Outline reasons for agreement or disagreement.

Q4. Respondents are invited to comment on the proposal to consider all domestic customers part of the same retail market. Are you in favour of the proposal? Outline reasons for agreement or disagreement.

5.0 Relevant Market Analysis

5.1 Introduction

Having defined the boundaries of the relevant markets for the supply of electricity in terms of product definition, the geographic boundary and the individual customer defined markets, it is necessary to analyse the level of competition in each individual market.

5.2 Assessing Competition in the Relevant Markets

When assessing the level of competition within a particular market, it is necessary to review both the empirical evidence of competition, such as the number of suppliers in a market and market share but also the more qualitative indicators of a functioning market including customer switching behaviour. The Commission is proposing to review a range of quantitative and qualitative measures when assessing whether competition has developed in a particular relevant market, or the market as a whole. The key indicators include:-

- the number of suppliers active in a particular market;
- individual market shares of the incumbent (and its affiliates) and independent suppliers;
- barriers to entry, expansion and exit including;
  - sunk costs
  - switching systems and processes
  - branding
  - non-discriminatory network access
  - access to wholesale product

Proposal 2 – The Commission is proposing that in assessing the level of competition in the retail market the following factors should be considered:

- the number of suppliers active in a particular market;
- individual market shares of the incumbent (and its affiliates) and independent suppliers;
- barriers to entry, expansion and exit including: sunk costs, switching systems and processes, branding, non discriminatory network access and access to wholesale product.

In reviewing the market conditions as evidence of competition, the Commission first considered the quantitative metrics including the number of suppliers active in each of the relevant markets and the market share trends in each of the relevant markets for each of the suppliers.

5.3 Competitors in the Retail Electricity Market

The Commission has overseen the gradual liberalisation of the electricity supply market which culminated in full market opening in February 2005 with independent companies now supplying about half of the electricity consumed (by volume) in Ireland. There are currently 5 main independent suppliers actively competing in the relevant retail electricity markets I-IV. However not all of these suppliers compete in all segments and this may be due to commercial/strategic reasons. The one exception to this is ESBIE, which is prohibited by licensing restrictions from supplying customers below a 225GWh / year threshold. The full breakdown of the suppliers and the market segments in which they are active in August 2009 is shown in table 5.1 below.

Supplier	Market Segment			
	Domestic	GP	LVMD	LEU
Airtricity (Scottish SE)	•	•	•	•
BGE	•	•	•	•
ESBIE		•	•	•
Energia		•	•	•
ESB PES	•	•	•	•
Vayu		•	•	•

Table 5.1 Market segments in which licensed suppliers compete as of August 2009

5.4 Market Share

All of the relevant markets (including public lighting) have seen the entrance of a number of independent suppliers over the past number of years. One of the key indicators of activity in the retail market is the level of market share achieved by these new entrants. Due consideration must be given not only to the current market share, but also developing trends and what is likely to happen given the prevailing regulatory environment and the effectiveness of competitors in a particular market.

The following sections of the paper report on the trends in market share for all suppliers and looks specifically at the combined ESB PES and ESBIE markets shares which, absent regulation, would represent the effective incumbent customer base. All of the data used in the calculation of the market shares is in this paper is based on information drawn centrally from the retail market system managed by the Meter Registration System Operator (MRSO). As billing data is only available two months arrears this information for consumption per supplier was only available to the end of August 2009 at the time of publishing. However, the total switching statistics, discussed in the next section indicate that significantly more customers have switched in August, September and October so the ESB PES market share of customer load is expected to be even lower.

5.4.1 Relevant Market I – Market for Large Energy Users

The LEU market was the first to open to supply by independent suppliers and represents the largest 1600 customers. Table 5.2 shows the market share of all of main suppliers over the period 2006 – 2008 where ESBIE, Energia and BGE emerged as the dominant suppliers in this market. At the end of 2008 ESB PES supplied only 10% of LEU load in Ireland.

YEAR	2006	2007	2008
ESB PES	10.59%	10.29%	10.42%
ESBIE	35.75%	37.72%	36.49%
Airtricity	0.03%	2.45%	4.12%
Energia	30.88%	28.88%	25.30%
BGE	17.36%	15.60%	16.62%
Others	5.39%	5.05%	7.05%

Table 5.2 LEU Market Share (GWh) 2006-2008[33]

At the end of August 2009, ESB PES supplied only 9% of LEU load and ESB PES and ESBIE combined served 49% of the LEU load, this equates to 40% of all-island load. Figures 5.1 and 5.2 show the percentage market shares by customer numbers and consumption at end August 2009. The size of the market should be considered when looking at the % variations in market share. Even if a supplier was to lose/gain only a few customers it could affect its position in terms of market share of load and potentially market power.

[33] ‘Others’, in the market share graphs refers to the purchasing of smaller suppliers (those with a market share of less than 1%) and generator ‘house load,’ (electricity purchased by generators to keep plants running when they are not producing).

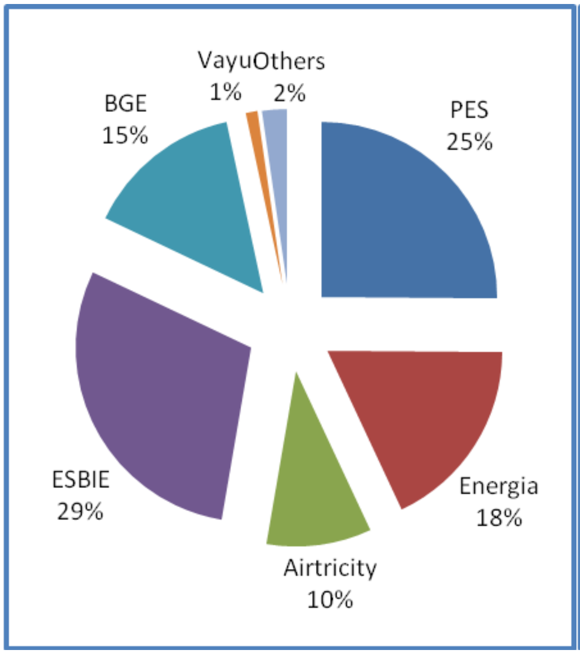

Figure 5.1 LEU Market Share (No. of Customers) at end August 2009

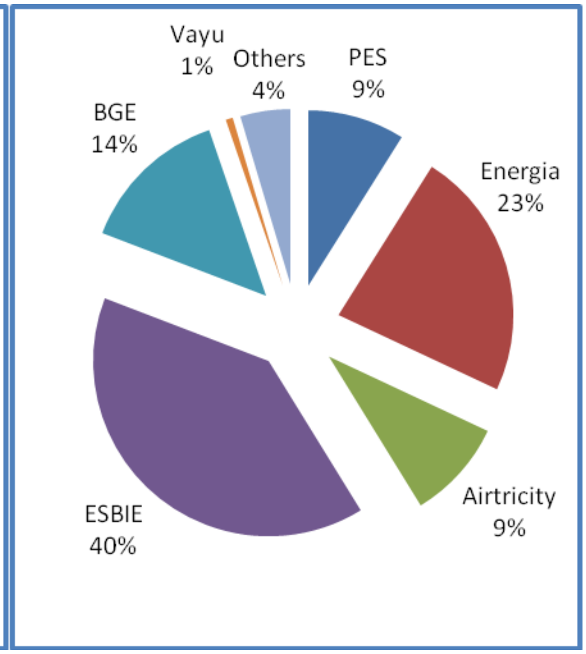

Figure 5.2 LEU Market Share (GWh) at end August 2009.

5.4.2 Relevant Market II - Market for Medium-Sized Business Customers

At the higher end of the SME sector are Medium-Sized Business customers. The Medium-Sized Business market segment was first opened to competition in February 2002 and represents approximately 13,500 customers. Table 5.3 shows the market share of all main suppliers over the period 2006 – 2008 where ESB PES, Energia and ESBIE emerged as the dominant suppliers in this market. At the end of 2008 ESB PES supplied less than 38% of Medium-Sized Business load.

YEAR	2006	2007	2008
ESB PES	44.68%	38.56%	37.48%
ESBIE	18.73%	18.66%	16.32%
Airtricity	2.87%	4.22%	5.59%
Energia	22.15%	26.59%	29.25%
BGE	9.44%	10.17%	10.61%
Others	2.12%	1.80%	0.76%

Table 5.3 % Medium-Sized Business Market Share (GWh) 2006-2008

This trend has accelerated in 2009 and at the end of August 2009, ESB PES supplied only 20% of Medium-Sized Business load. ESB PES and ESBIE had a combined market share of 39% in terms of consumption, this equates to 25% in terms of all-island load. Figures 5.3 and 5.4 shows the percentage market shares of all suppliers by customer numbers and consumption at end August 2009. At that time Airtricity had made significant gains in this market, showing an increase of 12% of customer load in the first 8 months of 2009.

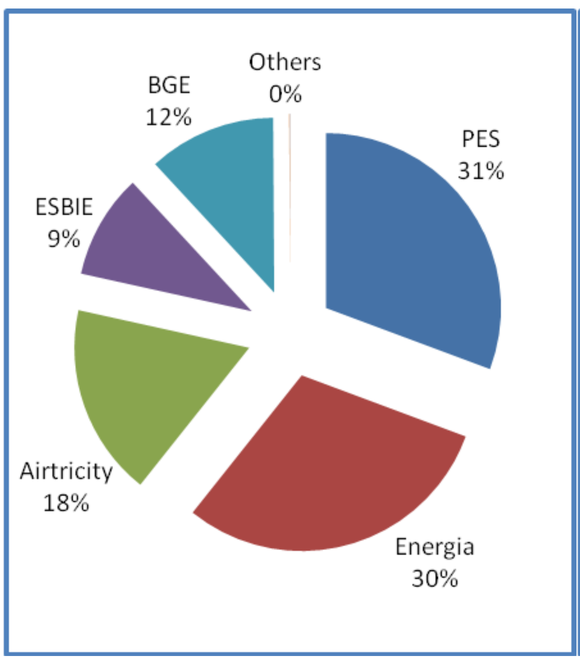

Figure 5.3 Medium-Sized Business Market Share (No. of Customers) at end August 2009.

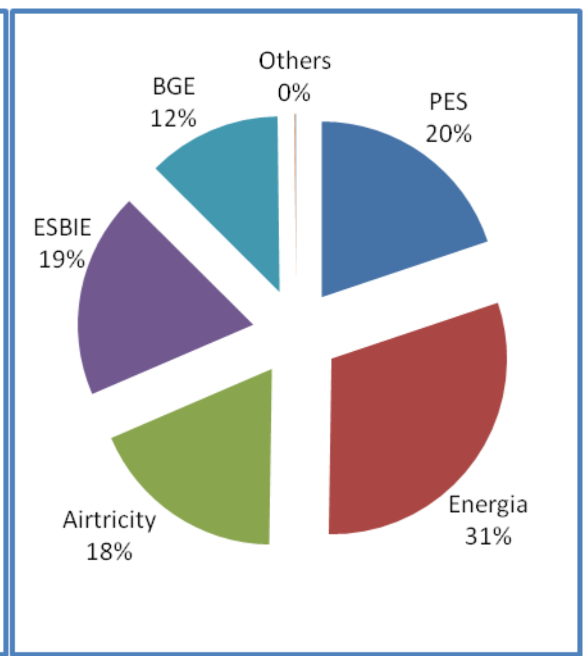

Figure 5.4 Medium-Sized Business Market Share (GWh) at end August 2009.

At the end of August 2009 ESB PES continued to lose market share and ESBIE has maintained approximately the same market share for the past 3-4 years while other independent suppliers have steadily increased their customer base.

5.4.3 Relevant Market III - Market for Small Business Customers

At the lower end of the SME sector are Small Business customers. This market was first to open to competition in February 2005 and represents approximately 190,000 customers in 2009. Table 5.4 shows the market share of all of main suppliers over the period 2006 – 2008. At the end of 2008 ESB PES supplied 48% of Small Business load.

YEAR	2006	2007	2008
ESB PES	56.64%	51.46%	48.09%
ESBIE	1.74%	2.16%	1.87%
Airtricity	18.00%	15.26%	15.93%
Energia	1.74%	21.34%	25.79%
BGE	3.91%	6.86%	7.31%
Others	3.91%	2.93%	1.01%

Table 5.4 % Small Business Market Share (GWh) 2006-2008

However by the end of August 2009, ESB PES supplied only 35% of Small Business load, a very significant loss of customer load in only 7 months, with Energia and Airtricity emerging as the principle competitors. Figures 5.5 and 5.6 show the market shares of all suppliers by customer numbers and consumption at end August 2009. At that time ESB PES and ESBIE had a combined market share of 37% of consumption.

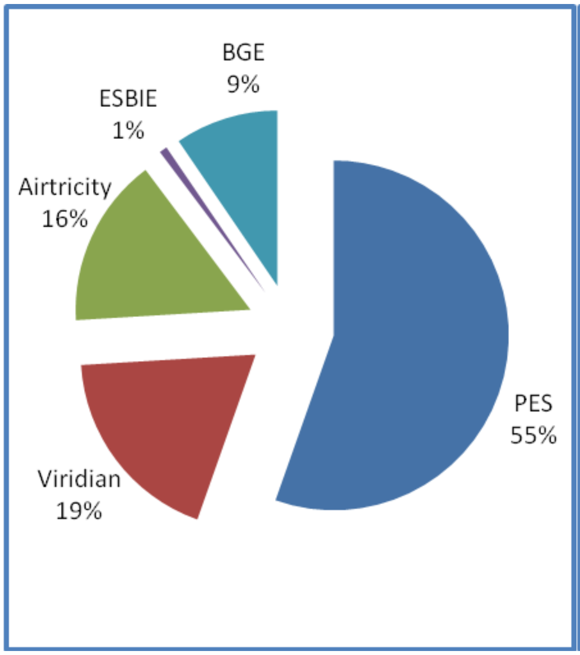

Figure 5.5 % Small Business Market Share (No. of Customers) at end August 2009.

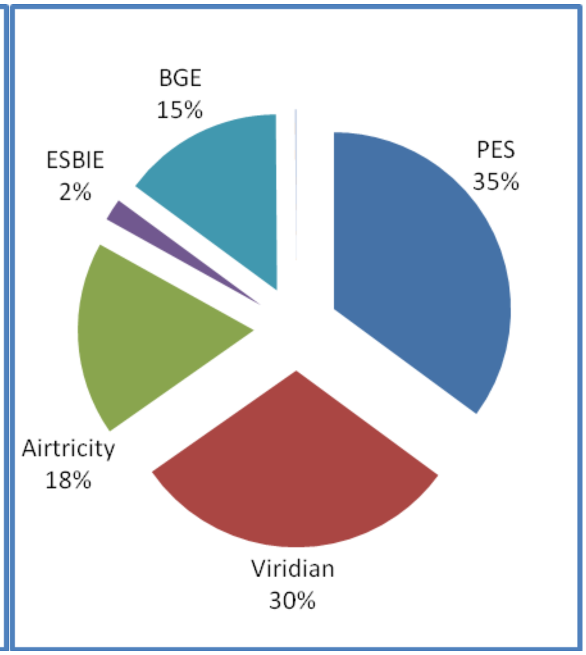

Figure 5.6 % Small Business Market Share (GWh) at end August 2009.

While the small business market is also highly contested with 3 independent suppliers having acquired significant market share in the past 3-4 years, ESB PES had still maintained its position as the dominant player throughout 2008. The trends in 2009 indicate that the market is becoming increasingly competitive with ESB PES and ESBIE having a combined market share of 37%, this equates to 28% of all-island load.

5.4.4 Relevant Market IV – Market for Domestic Customers

The domestic electricity market was lacking any meaningful competition until 2009 with ESB PES accounting for over 99% of the demand in a market with approximately 2 million customers. With the entrance of Airtricity and BGE to the domestic market there has been a rapid erosion of ESB PES's market share to approximately 84% of domestic load at the end of August 2009. Figures 5.7 and 5.8 show the market shares of all suppliers by customer numbers and consumption at end August 2009.

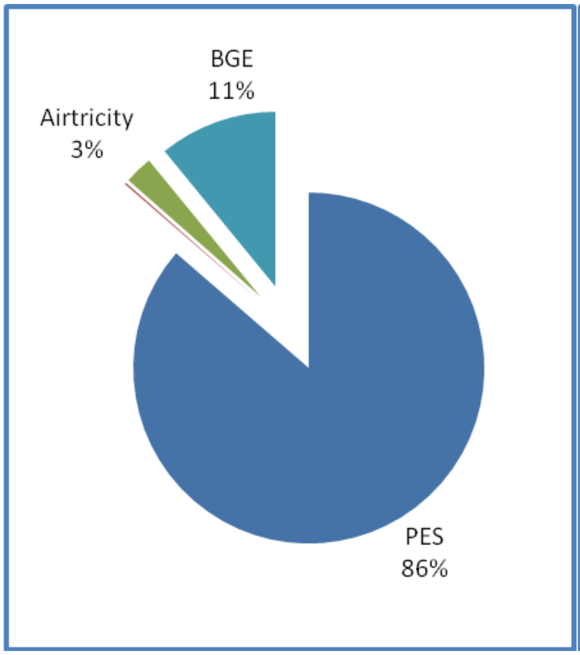

Figure 5.7 % Domestic Market Share (No. of Customers) at end August 2009.

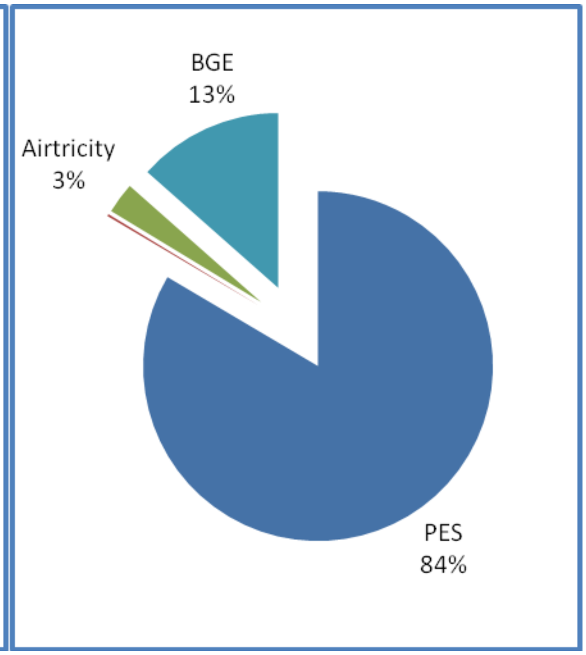

Figure 5.8 % Domestic Market Share (GWh) at end August 2009

Figure 5.9 also shows the monthly trend in ESB PES customer losses in the domestic sector from January to October of this year. This peaked around May 2009, and has since averaged about 35,000 domestic customers leaving ESB PES per month.

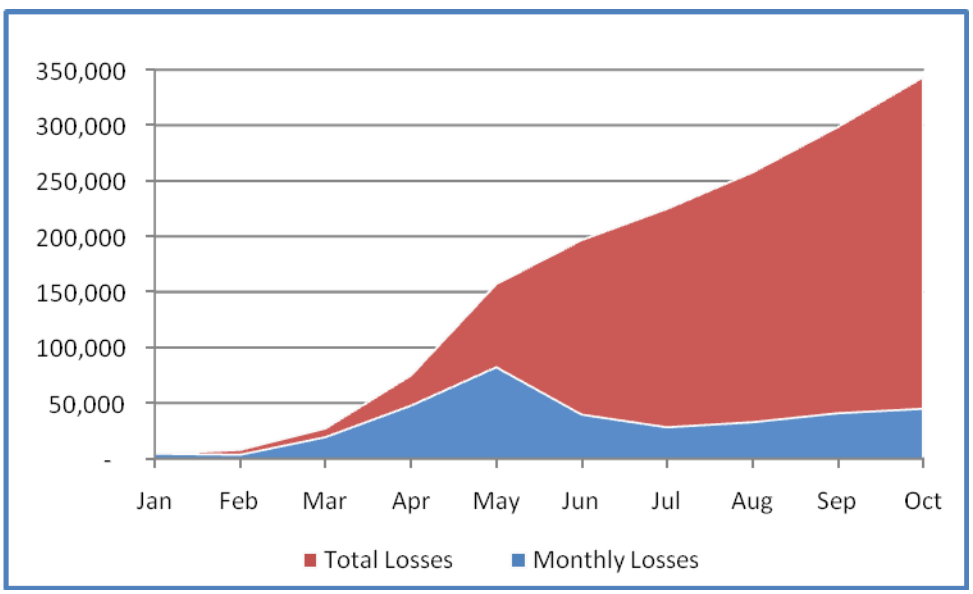

Figure 5.9 ESB PES Domestic Customer Losses in 2009

5.4.5 Market Concentration

The Herfindahl-Hirshman Index (HHI) is a commonly accepted measure of market concentration. It is calculated by squaring the market share for each supplier in the market and then summing the resulting squares. The HHI can range from close to zero to 10000. A result of 1800 or greater is sometimes considered to be a highly concentrated marketplace, though this judgement is usually in the context of assessing whether a merger is likely to damage competition.[34]

Employing the Herfindahl-Hirshman Index (HHI) to provide an indication of competition among the industry for Domestic consumption at end of August '09:

$$\text{HHI} = (\text{ESB PES\%})^2 + (\text{Bord Gáis\%})^2 + (\text{Airtricity\%})^2$$

$$= (84\%)^2 + (13\%)^2 + (3\%)^2$$

$$= (7056) + (169) + (9)$$

$$= 7234$$

While the HHI total of 7,234 shows that the market is highly concentrated, it must be remembered that at the end of 2008, ESB PES share of domestic consumption was over 99%. Therefore the HHI dropped to 7,234 in August from close to 10,000 at end of 2008. Thus the HHI is a useful indicator of growing competition in the domestic sector.

The HHI for the three other relevant markets are 2,903 for the Small Business Sector, 2,190 for the Medium Business Sector and 2,504 for the LEU Sector. While the HHI is much lower for the business markets than it is for the domestic market, none of the relevant markets reach the 1,800 figure. This may be due to the small scale of the Irish electricity market limiting the number of entrants into the market by reason of scale.

5.5 Summary

There are 5 independent suppliers currently active across all the relevant electricity markets (when ESB PES and ESBIE are counted as one supplier). Most of these suppliers operate in all three business markets, although only 3 are currently serving the domestic market. A review of the market share data to end August 2009 and the trends for the past number of years suggests that LEUs and Medium-Sized Business are heavily contested by the independent suppliers. The

[34] The Competition Authority: "Notice In Respect Of Guidelines For Merger Analysis": N/02/004

data for 2009 indicates that the same may be true for the small business markets. When the markets shares of ESB companies, i.e. ESB PES and ESBIE are combined, as would be the case in the absence of regulation, ESB holds market shares that are approximately 51%, 41% and 39% of the LEU, medium and small business markets respectively. In the domestic market, competition has only recently emerged but competitors have already captured 16% of the market. Table 5.5 gives a summary of the key market share data and also presents the combined ESB PES and ESBIE combined figures in terms of the all-island market.

Relevant Market	ESB PES % GWh	ESBIE % GWh	ESB PES & ESBIE % GWh of Ireland	ESBCS & ESBIE % GWh of SEM
LEU	8.93%	39.62%	48.55%	40.17%
LVMD	19.84%	18.92%	38.75%	25.45%
GP	35.10%	2.01%	37.11%	28.01%
Domestic	83.49%	0.00%	83.49%	62.66%

Table5.5 Market Share Summary (August 2009)

Q5. Respondents are invited to comment on the proposal to asses the level of retail competition using the factors outlined. Are you in favour of the proposal? Outline reasons for agreement or disagreement.

Q6. For each of relevant markets discussed, respondents are asked to consider if there is sufficient activity to consider the removal the regulatory controls in that market. Outline reasons for agreement or disagreement.

6.0 Other Criteria for Determining a Competitive Market

6.1 Introduction

Market share data, and the developing trends in market share, can provide a compelling representation of the relative strength of competitors in a market. The progressive erosion of the incumbent customer base across the different customer segments could indicate that markets are, at the very least, prospectively competitive. Market share data alone does not provide indisputable evidence of dominance, or lack thereof, and so market share should be considered in context; it does, however, serve as a proxy for market power. For example, is the recent and rapid erosion of market share in Small Business and Domestic merely a function of regulatory controls maintaining fixed annual incumbent tariffs in a market with falling wholesale prices? Would the switching dynamics change and would this trend be slowed, or indeed reversed, in the absence of regulated prices? In considering the case for full deregulation the regulatory authority must also take account of the broader market conditions which would enable the development of effective and sustainable competition.

6.2 Barriers to Entry, Expansion and Exit

One of the fundamental aspects of assessing the competitive environment is the ease with which new competitors can enter the market, which is one of the main potential competitive constraints on incumbent firms. The entrance of new competitors to a market, or even the threat of new entrants, can have an impact on the strategies and pricing levels adopted by existing market participants and may prevent a dominant incumbent from raising prices above competitive levels. However, if there are barriers to entry, expansion or exit, then the threat from competition will be reduced.

6.2.1 Sunk Costs

Unlike the markets for generation, transmission and distribution the retail market does not have high barriers to entry through significant levels of sunk costs. Sunk costs are costs which are required to enter a market, but which cannot be recovered on exit. Therefore a new entrant must consider whether there is potential to cover sunk costs as well as costs of service provision, whereas an incumbent has already covered its sunk costs. Sunk costs inevitably create a market power asymmetry between existing suppliers and potential new entrants. This asymmetry can deter efficient market entry.

On receipt of a supply licence, new entrants must sign up to a number of market agreements to enable them to participate in the wholesale market, secure network access and interface with the retail market systems but this does not constitute a major financial investment, relative to the generation market. The process does require a certain level of legal and technical knowledge with regards to the processes and procedures involved in the market, but all the approvals and processes are transparent and fully documented.

6.2.2 Switching

Customers should be at the centre of any successful development of competitive retail markets. According to ERGEG "*The possibility to switch to a new supplier within a short period of time and without obstacles and disadvantages for the customer is an essential pre-requisite for a functioning and efficient market*."[35] Low barriers to switching would indicate that, even when market share may still be high, market power is reduced. The quality of the industry processes will influence customer switching behaviour.

The switching process in Ireland is relatively straight-forward for market participants, free of charge to the customer, and provides a one-stop shop for customers who wish to switch suppliers. The customer must provide their name, address and Meter Point Reference Number (MPRN) to the new supplier. The MPRN is an 11 digit number and suppliers are required under the Billing Code of Practice[36] to include it on the bill. It is the unique identifier of a customer's connection to the network. If the customer provides a meter reading to their new supplier while switching, then the final bill is issued to the customer from the previous supplier, charging until that reading. If the customer fails to provide a reading, the switchover to the new supplier takes place at the point of the customer's next two-monthly bill. The change of supplier process typically takes D +5 working days if a customer reading is provided, but this can be up to D +40 if a read is not provided.

All customers can request to change supplier and the losing supplier cannot prohibit or delay the switching process, except where the losing supplier considers that that an error has been made in which case an objection can be raised. However, suppliers have raised the issue of increased bad debt within the industry and have recently proposed that provisions should be made in the switching process to allow a losing supplier to block a customer from switching if they are in bad debt. The Commission is currently consulting [37]on this issue for business customers.

One issue that affects some domestic customers switching is the availability of the Department of Social and Family Affairs (DFSA) Free Electricity Allowance. As part of the Household Benefits Package, the DSFA awards eligible customers an allowance for either gas or electricity. For those who elect to use it for electricity, the DSFA allowance covers standing charges, PSO levy (where it is a

[35] ERGEG Position Paper "Supplier Switching Process Best Practice Proposition" E05-CFG-03-05. P3 Section 5.
[36] Code of Practice for Customer Billing Guidelines for Electricity Suppliers, CER/06/186
[37] Debt Blocking Consultation Paper: CER09/136

positive charge) and 2400 units of electricity per annum[38]. Since the commencement of the scheme ESB PES, as the only supplier in the domestic market, has managed the scheme on behalf of the DSFA[39]. With the entrance of new suppliers in 2009, the DSFA has put in place arrangements with suppliers to facilitate DSFA clients that switch suppliers. Currently this is done on a manual basis where the customers advises the DSFA of the switch and receives a payment directly from the DSFA rather than a debit on their bill. The Commission is currently working with industry to develop a process within the retail market systems which will facilitate the seamless transfer of the award when the customer switches.

The Commission and NIAUR have recently issued a tender for consultants to conduct market research on customer switching. The customer surveys will address all markets segments to gather information on consumer awareness of the possibilities of switching and also customer experiences of the process. This data should be available in February 2010 and should provide a useful insight on the qualitative aspects of the switching process.

6.2.2.1 Total Customer Churn

Customer churn is a measurement of customers switching from one supplier to another. It is a useful measurement of how open and competitive a market is because is illustrates how hard competing suppliers are fighting to win new business from their competitors. The more intense the competition is the higher the level of churn may be, although there can be exceptions to this, particularly where there are relatively few large customers and their current supplier offers significant discounts to ensure they remain with them. The VassaETT[40] Utility Customer Switching Project reviews switching rates in liberalised markets. VassaETT has defined switching supplier as:

"a switch is essentially seen as the free (by choice) movement of a customer (defined in terms of an overall relationship or the supply points and quantity of electricity or gas associated with the relationship) from one supplier to another. Switching activity is defined as the number of switches in a given period of time".

Taking account of the rapid growth in the number of competitive markets, and increasing variance between market switching activity and maturity, VassaETT has defined the levels of activity in five categories; Dormant (<1%), Cool Active (1-3.5%), Active (3.5 – 9.5%), Warm Active (9.5% - 15%) and Hot (>15%) markets.

[38] 1200 of which can be carried over from one billing period to the next.

[39] The DSFA determines the customer's eligibility – there are approximately 330,000 DSFA customers.

[40] The Utility Customer Switching Research Project: www.vaasaett.com/projects/switching-project/

In 2007 and 2008 there were relatively low levels of churn in the Irish market, with approximately 20,000 switches in 2007 and 30,000 switches in 2008, which equates to approximately 1% and 1.3% or a 'Dormant' market in the VassaETT scale.

A dormant market is defined as;
***Dormant Markets**: Annual switching less than 1%. Typically, switching and competition exist only in theory. The markets may be officially open to competition, and customers are able to choose their supplier, but in practice only larger consumers are motivated or able to do so.*

In the first half of 2009, the volume of customer switching increased dramatically with the entry of BGE and Airtricity in the domestic market, which contains 91% of all customers in the Irish electricity market. The level of switching has increased to approximately 18% on an annual basis which is defined as a 'Hot' market in the VassaETT scale;

***Hot Markets:** Annual switching approximately 15% or higher. Typically, switching activity is so intensive that competitive positioning becomes one of the utility's most strategic issues. Switching momentum is usually high, constant, needs little encouragement and easily flares up.*

VassaETT has recorded the GB market as the only hot European market for switching in 2008 but has indicated that 15% annual switching may be the long-term equilibrium level for active European markets.

6.2.2.2 Domestic Customer Churn

The vast majority of customers that switched up to end-August 2009 are in the domestic market. While it is important to note that customer churn is an industry figure of all switches in the market and does not directly correlate to ESB PES losses, as it includes inter independent supplier switching. However the vast majority of switching in 2009 has represented domestic moves away from ESB PES. If this level of churn was to continue in the domestic market, with approximately 35,000 customers moving per month, ESB PES's domestic market share could be significantly diminished by end 2010.

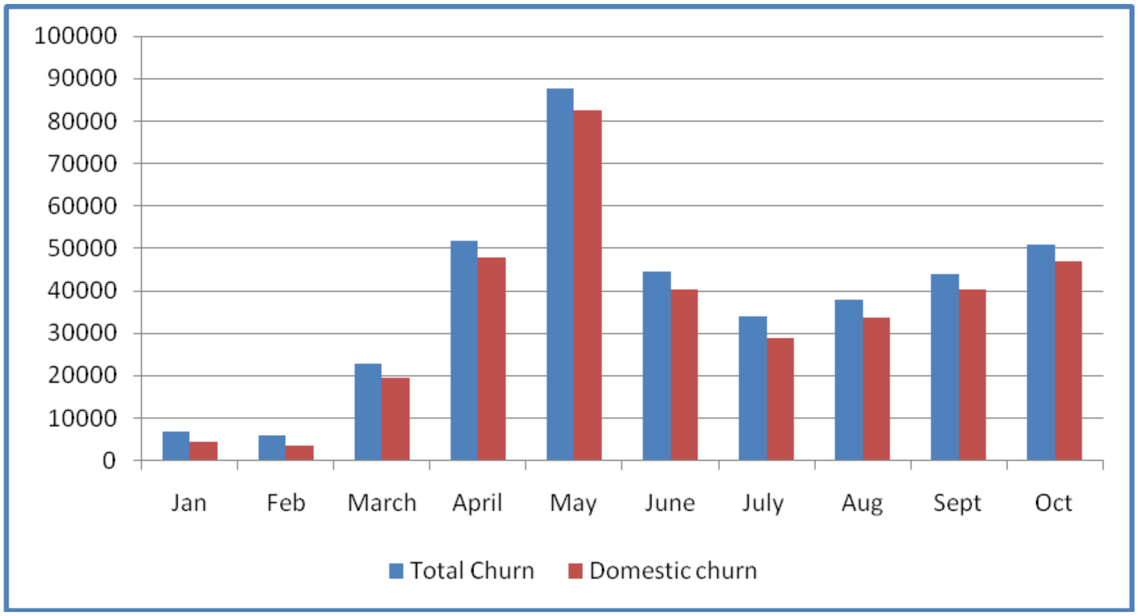

Figure 6.2 Total churn and domestic churn (no. customers who have switched supplier) January 2009 to October 2009.

The level of switching illustrates the increased competition that ESB PES faces in the domestic market, but it is also useful to understand the profile of customers that are switching. As noted in section 4.4.5, the domestic market has a significant number of customers (~22%) with very low consumption (<2000KWh / year). A review of the consumption profiles of those customers that have switched in 2009 shows that customers with a higher consumption profile have changed supplier more so than those on a lower consumption profile.

Preliminary View
There has been a significant increase in the level of customer churn across all market segments in 2009.

6.2.3 Non Discriminatory Network Access

In its recent report on DSO unbundling[41], ERGEG stated that DSO Unbundling is key for the further development of retail competition. The 2nd Liberalisation Package[42] required the legal unbundling of DSOs with more than 100,000 customers by 1st of July 2007. The objective was for the DSO to serve as a neutral market facilitator of retail competition by ensuring non-discrimination access to networks. Consequently, DSO unbundling is relevant to the liberalisation of retail markets and achieving competition where consumers are actively participating in the market.

[41] Status Review of DSO Unbundling with Reference to Guidelines of Good Practice on Functional and Informational Unbundling for Distribution System Operators: E09-URB-20-05
[42] Electricity Directive: 2003/54/EC

Functional and informational unbundling of the DSO has been fully implemented since 2008. This process was completed with the change of name to ESB Networks Ltd. ESBN is an independent DSO providing connection and metering services for all electricity customers irrespective of their supplier. ESBN has specific licence obligations[43] which prevent it from discriminating in favour of either of the suppliers within the ESB group.

Preliminary View *The level of DSO Unbundling provides non-discriminatory network access to all suppliers in the retail market and therefore does not present a constraint to a competitive retail market.*

6.2.4 Branding

The issue of the ESB brand has been raised by some independent suppliers as a major constraint which limits their expansion of customer base in existing business markets and more specifically from entering the domestic mass market. The ESB brand is undoubtedly one of the foremost Irish brand names, synonymous with electricity supply since its establishment in 1927. Some suppliers have suggested that there is a disproportionate hurdle in entering the domestic market to overcome the significant levels of consumer awareness and brand engagement enjoyed by ESB. While there are no structural or regulatory reasons to suggest that a new entrant with significant brand recognition in a different market could not successfully enter and compete with the ESB brand in the domestic market for the supply of electricity, it still may present a challenge to competitors.

As discussed in section 6.2.3 ESBN is subject to licence conditions which impose ring-fencing to ensure functional and informational unbundling yet many customers still perceive it as being one and the same with *ESB* Customer Supply. The common brand creates the potential for customer confusion and may cause unjustified consumer concern that switching away from *ESB* Customer Supply to an independent supplier will result in a lower quality of service in the event of any problems with their electricity supply or connection. This is difficult to test empirically, but the upcoming consumer survey may give some evidence as to whether this is a major concern or not.

Member states are required to review the branding issue in the context of the implementation of the 3rd Package. The Directive states that;

"…*vertically integrated distribution system operators shall not, in their communication and branding, create confusion in respect of the separate identity of the supply branch of the vertically integrated undertaking*."

[43] Distribution System Operator License Granted To ESB Networks Ltd: CER/08/039

In any event the branding issue is key to future decisions on deregulation and the Commission would favour appropriate remedies in order provide clarity to all consumers on the unequivocal business separation between the supply and distribution businesses within ESB.

Preliminary View

The high levels of awareness and brand engagement that ESB companies benefit from may present a competitive challenge to independent suppliers.

6.2.5 Access to Wholesale Product

The ability to access wholesale product is one of the critical issues for suppliers in a competitive market to enable them to manage risk. Suppliers in the SEM will either do this through a combination of the following means:

- own generation plant
- the purchase of contracts for difference (DCs, NDCs, fuel hedges,)
- purchasing directly from the SEM pool

(i) Vertical Integration
Many suppliers in the Irish retail market are vertically integrated but these suppliers may also require additional capacity to provide shape to meet the requirements of their specific customer group profiles. In particular, suppliers may have their own baseload generation plant, but may not, as yet, have developed sufficient mid-merit and peaking generation capacity as to ensure that they have a full portfolio of electricity supply. This issue should diminish in importance over time, however. It should be noted, however, that in “steady-state” competition, it is desirable that new entrants should be able to compete on some level without having a generation plant.

(ii) Contracts for Difference

2-way Contracts for Differences (CfDs) have enabled generators and suppliers to manage price risk in the SEM. This is a particularly important factor in the all-island market, as the very high dependence on fossil fuels, which are subject to considerable external variation, means that electricity prices in the island are likely to fluctuate more than in most jurisdictions. Suppliers can also pursue other CfD options in terms of fuel hedges, interconnector capacity etc, though these may not provide the same level of risk assurance as SEM pool prices are not perfectly correlated with fossil fuel prices. Suppliers have raised concerns in relation to the availability of contracts, and sought improvements in the contracting process. The range of directed and non-directed contracts that have been offered in the SEM from the incumbent generators are discussed in the following sections.[44]

Directed Contracts

The DC's are priced by the RAs and imposed on those generators that may have market power. These contracts have been structured to place all suppliers on an equal footing with respect to supply from existing generation and to mitigate any advantage of vertical integration that the incumbents have. DCs are offered to all suppliers annually, based on market data.

While the DC's may not provide the full level of hedging that independent suppliers need, they do provide a basic level of guaranteed hedge products to cover each tariff year. In 2009 the DC auctions sold a total of 3.42TWhs of hedges to the all island market[45].

Non-Directed Contracts

ESBPG was obliged to offer DC's in each of the past three years; however there are also Non-Directed Contract (NDC) auctions held in addition to the DC contract offers. These NDC auction rounds, which are currently offered at ESB PG's discretion, have offered significant opportunity for all suppliers to acquire additional hedges for the subsequent tariff year.

The NDC auctions offer baseload, mid-merit and peak products. All suppliers (and outside parties) are free to bid in the NDC auctions and while the prices are ultimately set by market forces, the DC prices set by the Commission have tended to heavily influence NDC prices.

In 2009 a portion of the CfD's were offered on the Tullet Prebon[46] multilateral trading facility (MTF), which suppliers welcomed as a positive and welcome step in the development of a more transparent contracts market. It is hoped that the use of a MTF will continue for the NDC auctions in 2010, which may provide additional scope for more flexible and liquid hedges to be offered by generators. In 2009 the NDC auctions sold a total of 5.61TWhs of hedges to the all island market.

Public Service Obligation Contracts

Similar to the NDC auctions, there are also a number of PSO contracts offered annually. These function in the same way as the NDC's, but are backed by the PSO supported generation plant. In 2009 the PSO auctions sold a total of 4.45TWhs of hedges to the market.

[44] Directed Contracts and Non Directed Contracts Processes 2008/09 An Information Note: SEM-08-052

[45] Directed Contracts 2009/2010 Quantification and Pricing Supplemental Decision Paper. Note this volume is calculated from the MW values shown in this report: SEM-09-053

[46] Contracts for Differences (CFDs) in the Single Electricity Market (SEM): SEM-09-051

(iii) SEM Pool
As noted above, spot prices in electricity wholesale fuel markets can be particularly volatile and this is reflected in the SMP price. This renders suppliers highly susceptible to both volume and price risks.

As set out above there are structures and procedures in place within the SEM to further develop, and ensure the sustainability, of a liquid wholesale contracts market. Notwithstanding any ongoing improvements to the contracting processes in the SEM, there are functional structures in place to provide suppliers with access to wholesale energy.

With these parallel processes in place the Commission considers that a sufficient level of access to wholesale product is necessary for the functioning of a competitive retail market.

Preliminary View
Market liquidity is an essential component of the competitive market. There are a variety of mechanisms, both inside and outside of the SEM framework, to ensure that there are suppliers in the retail market can access wholesale products and manage risk. It is necessary that these be maintained if effective competition is to flourish in the retail market.

6.3 Summary

This section has examined the market structures, supports and processes that are in place which influence the development of a functioning retail market. The Commission notes the significant market churn away from the incumbent supplier would not be sustainable, in the absence of regulated prices, if the appropriate structures are not in place; low barriers to switching, non-discriminatory network access, and the availability of wholesale energy. The Commission considers that all of these elements are in place in the Irish retail market. Undoubtedly there are ongoing improvements which need to take place and there are established industry fora and work programmes to address these issues, such as:

- Implementation of the seamless transfer of the DSFA allowance for domestic customers;
- Ongoing improvements to the contracting processes e.g. Tullet Prebon platform.

Given the level of customer switching that is now taking place in each of the relevant markets the Commission believes that the Irish retail market is developing all of the appropriate areas in terms of its structures and processes to support a fully competitive market further to the removal of price regulation. With these structures in place the next question is whether the incumbent's market share has reached an appropriate threshold at which its market power has been adequately reduced. The definition of the appropriate thresholds and how they would be applied to the relevant markets is discussed in the next section.

Q7. Respondents are invited to comment on the assessment of the barriers to entry, exit and expansion within the retail electricity market. Do you agree or disagree with the preliminary conclusions? Are there other issues which have not been discussed which would prevent or undermine the development of a competitive market? Outline any suggestions to improve the situation for existing suppliers and new entrants.

7.0 Determination of Competitive Markets

7.1 Introduction

The Commission has set out proposals to review the development of competition in four relevant retail markets; LEU, medium and small sized business, and domestic markets. A review of the market share data and trends for each of these markets in section 6 revealed that the incumbent market share is being steadily eroded in the business markets since 2005 and is subject to increased domestic customer losses in 2009. The Commission also considered the barriers to entry in the respective markets and proposed that the appropriate market structures are in place, with sufficiently low barriers to entry, expansion and exit, to support continued customer churn in a fully functioning deregulated retail market - where appropriate remedies are imposed with respect to the issue of branding separation between the supply and distribution businesses within ESB. In this context what are the appropriate trigger points at which price regulation can be removed?

This section sets out proposals for the quantitative criteria that would need to be met in a particular market before it could be deemed to be competitive, and therefore appropriate to remove price controls. It proposes thresholds for the number of players in a market, thresholds for market share and a timetable for a market status review when market share would be measured.

7.2 Criteria for a Competitive Market

The Commission is proposing that in coming to a view that a particular market is competitive, it must meet a number of specific requirements, including the following;-

- Number of suppliers in the market
- Independent supplier market share
- Incumbent supplier market share

The Commission considers that not one, *but all*, of the requirements set out below must be met before price controls can be removed.

No. of Suppliers in the Market

The Commission considers that there should be a minimum number of suppliers active in each of the relevant markets where ESB PES and ESBIE combined are assumed to be one supplier. The Commission is proposing that there should be a minimum of three suppliers active in the market prior to the removal of price controls to provide a minimum of range of offers to consumers.

Independent Supplier Market Share

The Commission considers that some of the alternative suppliers must be reasonably well established within the market and in a position to compete before price controls are removed. Otherwise the incentive on the incumbent to engage in anti-competitive behaviour could see such tactics as margin squeeze or predatory pricing to weaken or damage new entrants. Therefore the Commission is proposing that where there is a minimum of 2 independent suppliers in a particular relevant market, that the two independent suppliers have at least 10% share of load (GWh) each. The Commission is seeking views on the proposed level of market share that the leading competitors should be expected to achieve before controls are removed.

Incumbent Market Share

Section 3.3 discussed setting the appropriate thresholds for the removal of price controls in a particular market, and 40% is referenced as the benchmark figure for the presumption of dominance. The Commission is proposing the following threshold ranges for the level of combined market share that ESB PES and ESBIE combined serves (or will serve within a defined period). Table 7.1 sets out the proposed thresholds for the relevant markets in the Irish retail market as 40-50% for LEU customers, 40-50% for both SME segments and 55-60% for domestics.

Market	Proposed Thresholds for % Market Share (ESB PES & ESBIE combined)
LEU	40 -50%
Medium-Sized Business	40 – 50%
Small Business	40 – 50%
Domestic	55-60%

Figure 7.1 Proposed Thresholds for Calculation of % Market Share (GWh)

As noted earlier in the paper, the traditional threshold for dominance is approximately 40% of market share, but firms with considerably more than this level may be considered non-dominant if barriers to effective competition are low. Even if a firm is dominant it does not automatically mean it should be subject to *ex-ante* price controls – there are many firms in different sectors that may be dominant that are not subject to such controls. Given the nature of the electricity sector, however, price controls have generally being applied in most jurisdictions.

For the purposes of reviewing competition in the Irish markets, the CER is of the preliminary view that the market share thresholds for removing retail regulation are likely to be somewhat higher to that of the threshold for dominance i.e. 40%.

Subject to sufficient liquidity being maintained in the generation market and any remaining barriers to entry in the supply market, such as branding, being eroded, the Commission considers it appropriate to set the thresholds for business markets in the 10% range above the 40% benchmark.

The domestic market appears to exhibit different characteristics to the various business markets. It would seem that domestic customers are inherently less price sensitive and switch more slowly than business customers generating a degree of inertia in the domestic market. The "stickiness" of certain classes of customers means that switching in the market is less prevalent than in business markets, and that a lower market share threshold should be used. Evidence from other jurisdictions that have seen retail deregulation would suggest that certain classes of customers are very unlikely to switch at all. Thus an argument can be made that a portion of the domestic market is in practice un-contestable, and has not, or is not likely to switch. As discussed in section 4.4.5, this group includes low consumption customers and those that present a credit risk which collectively constitutes more than 20% of all domestic customer consumption. Therefore in maintaining that low threshold we may be proposing a threshold that cannot be met.[47] As such, it may be appropriate to adjust domestic threshold downwards to reflect the market realities. At this stage, the Commission's preliminary view is that a higher threshold for residential markets could be appropriate, but it is particularly interested in submissions that can adduce any evidence in this area.

These proposals represent the Commission's initial views on the appropriate thresholds to remove price controls in the relevant markets. It should be noted that they are only indicative at this stage and may change as a result of consultation and any further market evidence. If market conditions changed it would be likely to have an impact on the choice of threshold – for instance, if the ESB brand was not present, conditions in the supply market could improve and the Commission could take a view that the higher end of the thresholds be chosen. The Commission is seeking the views of stakeholders on why, or why not, these thresholds should apply.

[47] In 2005, six years after market opening in the UK, it is estimated that approximately 53% of domestic electricity customers have never switched. Source: Accent (2005) "*Customer Experience Survey*", May 2005, commissioned by Ofgem.

Proposal 3 – The Commission is proposing that regulatory price controls should be removed when competition is reached in a particular market where *all* the following criteria have been met;-

(i) At least three suppliers active in the relevant market

and

(ii) where there is a minimum of 2 independent suppliers, each has at least 10% share of load (GWh) in the relevant market.

and

(iii) ESB PES and ESBIE combined serves or will within a defined period 40-50% GWh in the LEU market, 40-50% GWh in Medium-Sized business market, 40-50% in the small business market and 55-60% GWh in the domestic market.

7.3 Market Status Review

The retail tariff year is aligned between NI and Ireland from 1st October – 30th September. The first of the major milestones in the tariff setting process is the directed and non-directed contract rounds which happen from approximately April - Jun[48]. It is essential that the timing of any review and potential changes to the regulatory framework must be known by all market participants in advance of the contracting rounds. By completing the assessment in March, market participants will be aware of the timing of any changes to the regulatory framework in advance, to enable suppliers to plan hedging and risk management strategies for the forthcoming tariff year, assuming price controls will continue in 2011. If that decision has not been reached in advance of contracting, then the implementation of any change would have to wait until the subsequent tariff period.

The Commission is proposing to conclude a market status review twice a year in March and October to assess market shares and review market conditions at that time. Each review will assess;

- each supplier's actual market share, as calculated from latest available MRSO data
- forward-looking analysis based on forecast market share data available at that time.

[48] Suppliers have requested that the contract rounds should commence earlier and run over a longer period.

There a number of options for how the Commission could implement any subsequent changes, based the outcome of the status review, and these are set out below.

Option 1 Historical Assessment
Where the threshold for a relevant market as set out in Proposal 3, is found to have been met and maintained for a period of time (duration to be defined), the Commission will remove the appropriate price controls effective from the start of the next tariff period.

Option 2 – Prospective Assessment
Where the threshold for a relevant market as set out in Proposal 3 has been met and maintained, or is likely to be met and maintained within 6 months from the date of the review, the Commission will remove the appropriate price controls effective from the start of the next tariff period.

For each of the options there is an assumption that annual tariffs are still in place. This means that a March review may result in a change to the regulatory framework in October of the same year. However any changes to the regulatory framework arising from a review in October, could only apply from the following October. In reviewing the options set out above the Commission reiterates that the objective of the review is to remove price controls, to benefit competition and consumers, but only when it is appropriate to do so. In doing so the Commission must estimate the risks of liberalisation and keep a watching brief on evolving market circumstances. Option 1 would see the Commission adopting a more conservative position, waiting until the thresholds has been met and maintained. For example the thresholds set out in Proposal 3 (based on the August 2009 consumption data) would indicate that all three business markets would currently pass the competitive tests but that the domestic market would not. Option 2 would provide for a forward-looking assessment of the levels of competition in the market and could allow for the removal of controls in a more timely manner but potentially allow for regulation at a lower threshold (where the threshold is achieved and maintained after October 2010).

The Commission notes that the market reviews would not cease with deregulation but would be required as an ongoing measure. Should the reviews identify that the thresholds have been breached the Commission may have to take remedial action to ensure that competition was not undermined, but could potentially see the re-introduction of price controls albeit in an ex-post capacity. Again the Commission is again seeking the views of stakeholders on the merits of these approaches and the preferred options.

Proposal 4 – The Commission is proposing to review conditions in each market on a bi-annual basis, starting in March and October 2010 including an assessment of each supplier's market share. The review will take account of the following;-

(i) the expected market share of ESB (ESB PES and ESBIE together). This will be based on actual market information from MRSO and CER forecasts.

(ii) the expected market share of every other supplier. This will be based on actual market information from MRSO and CER forecasts.

7.4 Summary

The Commission is seeking the views of stakeholders on a number of proposals for how and when the competitive assessments for each of the relevant markets would be done. The Commission has proposed that the tests would consider all three of the following criteria; number of competitors in a given market, minimum level of independent supplier market share and defined maximum level of incumbent market share (calculated as a combined figure for ESB PES and ESBIE). The Commission is proposing that reviews would be conducted bi-annually in March and October to determine if the tests had been met in each of the relevant markets.

Q8. Respondents are invited to comment on the proposal for the thresholds for the removal of regulatory controls in the relevant retail markets for electricity. Are you in favour of the proposal? Outline reasons for agreement or disagreement.

Q9. Respondents are invited to comment on the options for the review of market conditions in March and October. Are you in favour of the proposal? Should the reviews be historical or prospective? What actions do you think the Commission should take if competition tests fail in subsequent market reviews? Outline reasons for agreement or disagreement.

8.0 Proposed Changes to the Regulatory Framework – Removal of Price Controls

8.1 Introduction

As market structures evolve and competition is established to the level where independent suppliers are actively competing for customers and challenging incumbent market power, so too should the approach to regulation. Sections 6 and 7 of this paper have set out a number of proposals for how and when the Commission should assess the level of competition and establish milestones for deregulation. The following sections set out the proposed changes to the regulatory framework with respect to the removal price controls to be adopted in the business and domestic markets once those thresholds have been met.

8.2 Removal of Price Controls for Business Customers

The existence of price regulation is seen as a constraint to the development of full competition and the primary objective of this review is to set out a clear plan for how defined markets will be deregulated, if and when it is deemed appropriate to do so. This is in line with the ERGEG position that regulated end-user energy prices should only continue for as short a duration as possible, so as to enable effective competition to develop in the now liberalised energy market. However the obligations on the incumbent supplier, and its affiliates, with respect to price controls cannot be removed without consideration of the corresponding obligations on the incumbent such as the EPO, Universal Service Obligation, etc.

The Commission has proposed that there are 3 separate business markets. All ESB PES business customers are currently on regulated tariffs (LEUs are on a PPPT) and the removal of the price control for business customers would mean that ESB PES was supplying both regulated and unregulated customers. ESBIE, as the unregulated ESB supply company, serves customers exclusively in the business markets, above the 225GWh licence threshold, and at that level they are free to set prices without any regulatory interference. The current regulatory controls prohibit ESBIE from operating in the domestic and much of the small business markets. Subject to the completion of the competitive assessment, as outlined in section 7, the Commission will review the approach to the regulation of customers then served by ESB PES in the business markets, which could include the transfer of business customers from ESB PES to ESBIE.

An important issue is what happens if any thresholds ultimately chosen result in some markets being de-regulated at one stage while others are not. For example, suppose after a review, it was found that the medium business market was suitable for being de-regulated while the small business and residential were not. How should any resulting regulatory arrangements work until the small business and residential markets have reached the specified thresholds? There are a number of options for how the entity serving these customers could be regulated. These are set out below;-

Option 1 Transfer to ESBIE

Option 1 proposes the expansion of ESBIE to establish a 'de-regulated' supply company to which all ESB PES de-regulated business customers would transfer. To ensure that there were no adverse affects this option would require a number of safeguards to be put in place;

- customers in these market segments would be transferred to ESBIE who will provide supply from the start of the next tariff period (or 1st October of that year whichever is later) on the same terms and conditions as were previously offered by ESB PES.
- ESBIE may offer different pricing arrangements but cannot require the customer to move to these new tariffs.
- the Commission will not regulate the prices charged by ESBIE to these transferred customers except that ESBIE must at least offer a pool price pass through tariff option to LEUs.

The Commission notes that this option would require a change in the ESBIE licence to enable it to serve the majority of small business customers below 225GWh/ year. The requirement for a licence change will of course dictate the timelines for when ESBIE could actually serve these customers. A transfer would also require ESBIE to put in place sufficient resources (technical and personnel) to facilitate the transfer of the ESB PES business customers and provide ongoing business support. This could place a onerous burden on ESBIE in the context where domestic competition, and the complete removal of business restrictions, was anticipated to follow in a reasonable period.

Option 2 Unregulated ESB PES Customers with Accounting Separation

The customers in these markets would continue to be supplied by ESB PES where prices to these customers are not regulated by the Commission. This arrangement would see ESB PES serve both regulated and unregulated customers and would require that the ESB PES could satisfy the Commission on the allocation of costs to its regulated and unregulated customers. This would require a more intrusive form of regulation, by means of accounting separation, to transparently ensure the correct and non-discriminatory allocation of costs between regulated and non-regulated customers[49].

[49] In other regulated utilities it is usual for at least 3 years to pass between the imposition of the obligation of accounting separation and the publication of the first audited financial statements.

Option 3 No change until all business markets are competitive

The customers in these markets would continue to be supplied by ESB PES where prices to these customers continue to be regulated by the Commission. This arrangement would prevent any change to a relevant market for business until such time as all of the relevant business markets had been deemed to be competitive.

The Commission is seeking the views of stakeholders on the options outlined above, without proposing a preferred outcome.

8.3 Removal of Price Controls for Domestic Customers

Proposals for changes to the regulatory framework that would be implemented in line with deregulation of the business markets have been set out above. Competition in the business markets is in practice, if not in theory, a pre-requisite to extending full deregulation to the domestic market. Subject to the completion of a market status review which indicated that the prescribed criteria for a competitive market had been met, or were likely to be met, in the domestic market, the Commission would then review the approach to the regulation of all domestic customers served by ESB PES. The Commission will consider the following areas where changes would be required to the form of regulation;-

Price Controls

- Removal of all price controls on ESB PES
- Removal of the Economic Purchase Obligation on ESB PES

Other

- Review of the obligation of Non – Discrimination
- Review of the designation of ESB PES as the Supplier of Last Resort and the Universal Service Obligation

In relation to its role as the Error Supply Unit, a work stream is underway via the SEMO Trading & Settlements Code Modifications Panel in relation to Global Aggregation will see the ESB PES liability in relation to the Error Supply Unit addressed on an industry basis.

As discussed in section 2.1 some of the regulatory requirements pertaining to regulation of tariffs are directly derived from obligations on the CER in primary legislation. Therefore any proposed changes would require amendments to the underpinning legislation. The Commission has a statutory duty to advise the

Minister on developments in the electricity market and will engage with the Minister on this basis. Subject to approval for the necessary legislative amendments the Commission could undertake the necessary licence reviews.

Proposal 5 – The Commission is proposing that further to all the criteria for a competitive market being met in all markets and subject to the DCENR making all necessary legislative changes, the Commission will also take steps to change the form of regulation to reflect the following principles:

Price Controls

- Removal of all price controls on ESB PES
- The removal of any ESB PES Economic Purchase Obligation from ESB PES.

Other

- Review of the obligation of Non – Discrimination
- Review of the designation of ESB PES as the Supplier of Last Resort and the Universal Service Obligation

8.4 Regulatory Monitoring

The aim of the proposals set out above is to enable sustainable competition. Absent price regulation, the Commission will continue to monitor market activity to ensure that ESB (ESB PES & ESBIE) do not breach the market share thresholds or any of the other criteria that has been defined for each of the competitive markets.

The Commission has the statutory duty, in relation to electricity to monitor, inter alia, the level of completion.[50] Additionally the Commission has the duty to have regard to the need to promote competition in generation and supply of electricity.[51] In performing these monitoring duties with regard to competition in the SEM, the Commission can utilize the cooperation agreement in place with the Competition Authority.[52]

[50] SI 60 of 2005, Section 9(1D)(h)
[51] Electricity Regulation Act, 1999, Section 9(4)(a)
[52] "Co-Operation Agreement Between the Competition Authority and the Commission for Energy Regulation"

The Commission is proposing that in order to ensure that ESB PES and ESBIE continue to operate at or below the defined competitive thresholds; the following monitoring provisions will apply;

i. The Commission will regularly review the operation of these arrangements.
ii. The Commission would carry out bi-annual reviews of market share of every supplier in each market (calculated on a consumption basis) in March and October. These reviews will be based on actual market information from MRSO and CER forecasts.

The Commission accepts there are risks in removing regulatory controls. If, after the removal of any price controls, there is either an increase in general retail prices which cannot be justified by changes in underlying costs or a marked reversion in market share patterns and corresponding decrease in the level of competition as the former incumbent reverts to a dominant position, then the outcome for consumers may be negative. It should be noted, however, that there are possible measures to prevent this.

Firstly, it is possible that if competition suffers and/or prices rise unreasonably then some form of regulation could be re-imposed by the Commission. This could include a transitional response such as a price cap. However, such a measure would be costly and cumbersome and might represent a reversal of any benefits realised by removing price controls. Second, in a market no longer marked by ex ante price regulation, there is still the remedy of ex post competition law to remedy any problems. It has been often noted that the application of ex post competition law takes more time than regulation. The Commission is interested in the views of stakeholders, should deregulation proceed at the suggested threshold levels, as to how ex post competition law might be utilized to prevent or address any problems in the Single Electricity Market. The Commission would be interested in any views respondents may have regarding the imposition of a price cap on suppliers following the removal of the ESB PES price control.

Proposal 6 – The Commission is proposing that further to the removal of price controls, the Commission will continue to monitor market activity and any significant change in market conditions, imposing appropriate remedies on ESB PES and/or ESBIE as required.

8.5 Summary

The Commission has set out a number of options in relation to how the price controls could be removed from the business and domestic markets once the thresholds have been met. The Commission has set out the options for consultation and is seeking the views of stakeholders. The Commission has also set out its commitment to ongoing regulatory monitoring once price controls have been removed.

Q10. Respondents are invited to comment on how the price controls should be removed in the context of only a portion of the relevant business markets reaching the threshold for the removal of the price control. Should the de-regulated customers be transferred to ESBIE? Should ESB PES be allowed to serve regulated and unregulated customers or should the price control remain in place until all markets have reached their thresholds. Is there another course of action that you would be in favour of? Outline reasons for agreement or disagreement.

Q11. Respondents are invited to comment on Proposal 5, Section 8.3, to change the principles of regulation, should the criteria for deregulation be met. Are you in favour of the proposal? Are the principles outlined correct? Should any additional principles apply?

Q12. Respondents are invited to comment on Proposal 6 Section 8.4, to maintain regular monitoring to ensure that ESB PES & ESBIE continues to operate at or below the defined competitive thresholds. Are you in favour of the proposal? Should any additional monitoring apply? Will competition law be sufficient to deal with any problems? Should a price cap be implemented? Outline reasons for agreement or disagreement.

9.0 Market Liquidity and the Regulatory Framework

9.1 Introduction

The development of competition requires that appropriate changes are made to the regulatory framework to ensure that competition is both sustainable and can deliver the maximum benefit to consumers. The Commission is consulting on proposals for the removal of price controls as set out in section 8. The Commission considers that while this represents significant changes to the current regulatory framework, this maybe the first phase in moving to a fully deregulated market. In setting out the Roadmap, the Commission is also seeking the views of stakeholders on the potential impacts for the wholesale market.

9.2 Market Liquidity

As discussed in section 6.2.5., access to wholesale product is one of the essential enablers of an effective and competitive retail market. Accordingly, the Commission notes that any market deregulation i.e. the removal of price controls, should only take place in the context of where ongoing liquidity in the wholesale market was secured.

Suppliers have in the past raised concerns in relation to the availability of contracts, and have sought improvements in the contracting process in a number of areas; the extension of the contracting period, the volume of contracts and greater flexibility and variety of products. Over the last two years, ESB PG has offered, on a voluntary basis, significant contract volumes to the SEM providing essential shape (mid merit and peak products); 1,701 GWhs and 1,493 GWhs to the market in Non Directed Contract rounds in 2008 and 2009 respectively. The Commission notes that it is not the sole responsibility of ESB PG to solve the broader issue of market liquidity in the SEM, and that these issues can, and should, be addressed via the SEM rules and mechanics. Therefore it is a matter for the SEM Committee to impose compulsory requirements on the appropriate generators if it considers that there is not enough liquidity in the wholesale market. However ESB should not be permitted to engage in behaviour as a result of deregulation in the retail market that would have a detrimental impact via actions in the wholesale market.

9.3 Reintegration of ESB

In the longer term the incumbent is likely to want the opportunity to re-integrate the generation and supply arms of the business allowing it to self-hedge in order to manage the overall group risk and trading position to the potential advantage of its customers. The removal of the restrictions could relate to both the vertical integration of the generation and supply arms of ESB PG and ESB PES and also to horizontally integrate ESB PG with the generation units of ESB IE and the two supply businesses ESB PES and ESBIE. The integration of the two generation businesses may impact upon the ESB position as a player in the wholesale market.

The Commission is proposing that the issues of reintegration should be discussed at the SEM Committee to determine if there are any issues which could be considered to be an SEM matter. If the matter is not considered to be an SEM Committee matter, then a further consultation paper from the Commission on this issue is likely to be published in the near future. If it is considered an SEM Committee matter, then there may well be a further consultation paper, but the Commission cannot fetter the discretion of the SEM Committee should this be the case.

Regardless of the jurisdiction issue, the Commission notes that liquidity of the wholesale market is a key issue and that if reintegration was to be permitted that the Commission would likely require commitments from ESB in this area. ESB has indicated a willingness to engage on this topic.

9.4 Summary

The Commission is of the view that deregulation should only happen in the context of ongoing liquidity. The potential reintegration ESB is noted as a proposition that could deliver longer term benefits to consumers through greater efficiencies between the generation and supply businesses. The Commission notes however that this could alter ESB's position with respect to the wholesale market and to that extent it may constitute an SEM matter (as determined by the SEM Committee). As such the Commission is proposing that this issue should be discussed at the SEM Committee to determine if it is indeed an issue that should be decided upon by the SEM Committee.

10.0 Consumer Protection

10.1 Introduction

The proposals in this paper and the issues that have been raised for consultation with respect to the removal of price controls are intended to bring benefits to consumers through a more competitive market. Regulated tariffs are intended to provide a proxy for competition in the retail market, setting a benchmark for 'cost reflective' prices. The Commission is seeking the views of stakeholders on what additional measures should be introduced to ensure that consumers continue to be protected and equipped to make informed choices in a competitive market.

10.2 3rd Package Requirements

One of the main provisions of the 3rd Package looks at retail market measures. In terms of the retail market the key themes are; (i) the role of regulators, (ii) consumer protection measures and (iii) the operation of the retail market. The key points of the directive with respect to the retail market are set out below.

(i) Role for regulators

- *Independence from governments;*
- *Legally distinct and functionally independent body;*
- *Budgetary autonomy and adequate human and financial resources to carry out duties;*
- *Mandate to cooperate at the European level*
- *Enhancement of statutory duties and powers;*
- *Implementation and monitoring of consumer protection measures; Investigation powers;*
- *Issue binding decisions;*
- *Penalties: regulatory or through courts.*

(ii) Consumer protection measures

- *Complaint handling measures;*
- *Single contact points (possibly sub-national);*
- *Ombudsmen;*
- *Protection of consumers;*
- *Member State definition of vulnerable consumers that may refer to energy poverty;*
- *Prohibition on disconnection at critical times;*
- *Interaction with other social policy measures.*

(iii) Operation of the retail market

- *New provisions for the operation of the retail market;*
- *Published rules on the roles and responsibilities of all market players;*
- *Information for consumers: European Energy Consumer Checklist;*
- *New deadlines on switching, 3 weeks, and receipt of final bill, 6 weeks;*
- *Consumer access to consumption data in sufficient time periods;*
- *Implementation of Smart Metering*
- *Promotion of Smart Grids.*

This renewed focus on retail issues and consumer protection provides the framework within which to address consumer issues and also issues which may arise as a result of the removal of price controls.

10.3 Special Protections on Tariffs

While the achievement of competition milestones in the bi-annual reviews may indicate that the market has reached the appropriate stage of development to relinquish regulatory controls, the Commission notes its concerns that the immediate and complete cessation of regulation could cause market distortions, and in particular leave vulnerable customers exposed to onerous pricing arrangements in an open competitive market. ERGEG has stated that protecting “vulnerable customers” remains necessary in competitive markets but that the tools used for the protection of vulnerable customers must work in line with and support the pre-requisites of open, competitive markets. It is necessary to set out what conditions should apply to ensure that competition is sustainable but also that consumers are protected. The Commission notes that there may be other, narrowly defined, groups of customers that may also merit these special protections.

The Commission notes the experience of retail market deregulation in Great Britain. In 2002 there was full market deregulation in the electricity sector which eventually led to the development of a retail market with six large suppliers and a number of smaller, “niche” players. Since that period there have been no major increases in market power, and correspondingly no perceived need for the re-application of price controls. However, the GB regulator (Ofgem) has conducted a number of reviews and surveys of the retail market and has raised the possibility that some customers may not be fully benefiting from competition. In particular, Ofgem has suggested that vulnerable customers are not likely to switch from their established supplier, even if significantly cheaper prices are being offered by other suppliers. Such customers may need special protection, whether through being provided with easily understandable and accessible information or even through specific requirements on suppliers as to the prices they charge such customers.

Any additional requirements in respect of vulnerable customers (or other domestic groups) should apply to all suppliers, and not just ESB PES. Therefore the Commission is proposing that for vulnerable and or other groups of domestic customer, as defined by the Commission, ESB and ***any other supplier*** may be required (through licence) to offer tariffs on principles acceptable to the Commission. The Commission is not, in this paper, attempting to analyse this issue in detail or suggest specific proposals. It does wish, however, to raise the issue for comment and consider any responses on it. Any specific proposals in this area will be consulted on and developed in the future.

The Commission is also consulting on guidelines for the Suppliers Codes of Practice in one reference handbook for all suppliers. The Codes of Practice and supplier guidelines would also need to be reviewed in light of any changes to the regulatory framework. When compiling the handbook the guidelines were reviewed and updated where it was felt necessary.

Proposal 7 – The Commission is proposing that once regulatory price controls have been removed, ESB PES and ***any other supplier*** may be required (through licence) to offer tariffs to vulnerable and or other groups of domestic customers, as defined by the Commission, on principles acceptable to the Commission.

10.4 Summary

The Commission is mindful that while the driver for deregulation is ultimately to bring the benefits of a competitive market to consumers, the removal of price controls could have unintended consequences disadvantaging some groups. Consideration must be given to the most vulnerable customers, who with deregulation may no longer have the protection of regulated tariffs but who at the same time may be unable, for a variety of reasons, to benefit from a more competitive retail market. The Commission is consulting on whether respondents have any general views on whether there should be measures which would impose obligations on all suppliers with respect to tariffs to vulnerable customers, or other groups as defined by the Commission. Any specific proposals will be consulted on in the future, in a separate workstream from this. Also, any special protections in relation to tariffs would be implemented in line with the requirements of the 3rd package which has an increased focus on consumer protection measures in the retail market.

Q13. Respondents are invited to comment on Proposal 7, Section 10.3 that ESB PES , ESBIE and ***any other supplier*** will be required (through licence) to offer tariffs vulnerable and other groups of domestic customers, as defined by the Commission, on principles acceptable to the Commission. Are you in favour of the proposal? Outline reasons for agreement or disagreement. Are there any other specific consumer measures required with the removal of price controls?

11.0 Interim Regulatory Arrangements

11.1 Introduction

In setting out a roadmap for deregulation the Commission is seeking the views of stakeholders on the appropriate criteria to determine the milestones as the market transitions from one stage of competition to the next. The Commission notes that these milestones should not be determined as arbitrary points in time but by the achievement of competition milestones in relevant markets. In parallel, the Commission must also consider how the current regulatory framework functions, and will continue to function, in the interim period until such time as it is appropriate to fully deregulate.

11.2 Tariff Regulation

While the Commission is setting out the steps on the roadmap it must also consider how the current regulatory framework can be improved and developed until such time as it is appropriate to remove price controls. Some of the decisions include; Price Control III (the next multi-year supply review) and the current consultations on the use of correction factors and tariff structures.

Price Control III

The form of revenue control determines the nature of control placed on the business (e.g., a cap on revenues recovered from customers or a cap on prices charged to customers). It also sets out an efficient level of revenues (made up of allowed operating costs, depreciation charges on capital expenditure derived from the allowable capex, and an allowable margin) that can be recovered by the business from its customers in a particular operating period (usually a calendar year). The ESB PES revenue control incorporates incentives to improve both productive efficiency and customer service performance levels.

The first 5-year price control imposed on the ESB PES business unit commenced in 2001 and concluded at the end of December 2005. Early in 2005, the Commission undertook to develop a revenue control to apply to the supply businesses for the next 5-year period, from 2006 to 2010. This involved a thorough analysis of ESB PES's submission on costs of supplying electricity to customers over this period. This analysis culminated in the Commission's final decision on 'allowable' costs and form of revenue control to apply for the business over this 5 year period. This control has now expired and the Commission must set out how ESB PES revenue will be regulated in the coming, and subsequent, tariff years.

During the last supply review there were a number of issues that the Commission highlighted for consideration in the next review including:

- The fact that one of the key assumptions made when the revenue model was designed was that national demand growth and new connections would continue to rise, which has not been the case over the past twelve months.

- The importance of providing a stable and predictable regulatory environment, and the impact that disallowing the K-factors would have on independent suppliers and the level of competition in the market, were also primary concerns.

- The Commission's objective to ensure that consumers benefit from regulation and the introduction of competition in the energy sector. In particular, the Commission was anxious to avoid any unintended negative effects due to consumers switching between suppliers.

The Commission is mindful that with increasing competition a shorter term price control may be more appropriate, perhaps 1-3 years. However given the issues highlighted with this year's review the Commission does not consider that the existing price control could be extended in its current form.

Review of K-Factors & Tariff Structures

In line with its commitment to developing greater north / south retail market harmonisation, the Commission published a joint paper with NIAUR in June 2009 with two consultants' reports on; a Review of K-Factors & Supply Margins and a Review of Tariff Structures.

The K-factors paper looked at the identification and quantification of existing and potential K Factors within electricity tariff structures in Northern Ireland and an assessment of the impact of existing or potential K Factors on retail competition in the all-island supply market with recommendations as to the future treatment or elimination of K Factors where appropriate. The tariff structures paper gave a detailed review of existing electricity tariff structures and cost allocation methodologies in Northern Ireland and in Ireland. It set out proposals for implementing a harmonised approach on tariff structures, with recommended options and an assessment of the impact of implementing the proposed options in the all-island supply market..

The Commission is due to publish the response paper to both of these consultations with consultants' recommendations for next steps.

11.3 North / South Retail Market Harmonisation Programme

Since the implementation of the SEM, the Commission for Energy Regulation (CER) and the Northern Ireland Authority for Utility Regulation (NIAUR), the Regulatory Authorities (RAs) have implemented a number of measures to promote harmonisation and competition with the retail markets across the island. In this context the RAs have commenced a project for the further harmonisation of the electricity retail markets. This project is to be known as the Retail Market Harmonisation Project (“Harmonisation Project”).

The systems that govern the retail market in both jurisdictions pre-date the SEM and are quite different in terms of the level of automation and order capacity. Northern Ireland Electricity (Transmission & Distribution) has commenced the ‘Enduring Solution Project’ to replace the legacy systems in Northern Ireland. This affords all of industry a unique opportunity to harmonise the systems north and south and exploit the full advantages to the benefit of the retail electricity market. The project will initially review the market messages and underlying processes in both markets and agree a harmonised message interface. Long term governance arrangements i.e. arrangements for a single schema release, will be put in place to manage the outcomes of the HP.

CER is actively working with NIAUR, ESB Networks, NIE Networks and suppliers to provide for the development of retail market systems. Once these systems are in place (currently expected by Q1 2012), there will no restriction on the number of customers that can change supplier in the NI market. These systems are very important for the development of competitive retail markets on an all island basis. As noted earlier, the geographic definition of the market would be reviewed again in that context.

11.4 Summary

While the Commission is committed to setting out the roadmap for deregulation with a view to implementing changes to the regulatory framework at the appropriate junctures, the Commission is continuing to develop the existing regulatory framework. Mindful of the developing competitive market the Commission will continue to consult on the appropriate structures for the next price control and work with NIAUR on various projects which will provide a greater degree of harmonisation in the retail markets north and south.

Q14. Respondents are invited to comment on the interim work programme which will develop the current regulatory framework until the roadmap has been implemented (in part or in whole) Are you in favour of this approach? Outline reasons for agreement or disagreement.

12.0 Conclusions and Next Steps

12.1 Summary

The Commission has set out its Roadmap which identifies the milestones to a deregulated market. This paper contains a number of preliminary views and proposals for consultation. The Commission is keen to receive the views of stakeholders with respect to these proposals, the specific questions raised and other issues relevant to the deregulation of the market.

- The legislation governing the current regulatory environment places responsibilities upon the Commission, such as approving ESB PES tariffs. Legislative changes would need to be made in order to facilitate any removal of the price control. Therefore the implementation of recommendations arising from this consultation process is entirely dependent changes to the current legislation could only be brought about by amending or repealing legislation which is a matter for the Minister for Communications, Energy and Natural Resources.
- The Commission has set out its view that competition in the retail market is a positive thing and has the potential to benefit all stakeholders in the market.
- The paper identified the theoretical stages of the development of a competitive market and the key characteristics noting how the role of the regulator must evolve in line with these changing market conditions.
- This paper reviewed the retail market in Ireland and proposed definitions for the relevant markets for electricity only, within jurisdictional boundaries;
  - *Relevant Market I - large energy users (DG 7, 8, 9, 10 & TCON)*
  - *Relevant Market II – medium-sized business customers (DG 6)*
  - *Relevant Market III - small business customers (DG 5)*
  - *Relevant Market IV - all domestic customers (DG 1&2)*
- Competitive conditions in each of the relevant markets were examined. This analysis included market share, the number of suppliers active in a particular market and barriers to entry, expansion and exit including; sunk costs, switching systems and processes, branding, non-discriminatory network access and access to wholesale product.
- In all markets, the ESB PES market share has fallen over time as new entrants have entered and offered alternatives. This process began with the opening of the LEU market and has continued with the entrance of Airtricity and BGE into the residential market in 2009.
- The Commission has set out the preliminary view that barriers to entry, expansion and exit are relatively low and that the removal of the ESB brand would further improve the competitive conditions in the supply market.

- The Commission proposed a number of metrics in relation to the assessment of competition. This included the proposed criteria of insisting that a market has at least three competitors, of which the two independents have a market share greater than ten percent in order to be deemed ready for deregulation as well as consumption market share thresholds to be achieved. The criteria for deregulation are to be measured twice yearly in market reviews beginning in March 2010.
- The paper proposes options for how price controls would be removed. The key question in this regard is whether all eligible markets will be deregulated separately or at the same time and how unregulated customers are dealt with in the interim.
- Ongoing market liquidity is highlighted as a key issue in the absence of regulation. The Commission also notes in the paper that the longer term issue of ESB reintegration may be an SEM matter as determined by the SEM Committee and proposes to address that issue further through that forum. The Commission may consult on this issue separately.
- The issue of consumer protection and any additional remedies that would be required in the absence of price controls is also discussed.
- Notwithstanding the proposal to conduct competition reviews from 2010, the Commission sets out interim measures and transitional arrangements which would apply until price controls are removed.

12.2 Next Steps

The Commission is requesting responses to this Roadmap consultation no later than close of business, 1st February and intends to publish its Decision paper on 1st March, and then publish the result of the competition review by end March 2010. The outcome of the March review will inform the work programme for deregulation for 2010, for example this could involve a licence review. The Commission may also consult separately on the issue of ESB integration, subject to the outcome of discussions with the SEM Committee. The detailed timetable is set out below.

12.2.1 Timetable of Implementation

Action	Date
Publish Consultation Paper	2nd Dec 2009
Responses to Consultation Due	1st Feb 2010
Publish Decision Paper	1stMar 2010
Publish 1st Competition Review – March	31st Mar 2010
Implement changes to regulatory framework as per outcome of Roadmap consultation e.g. licence review	Q2/Q3 2010
Publish Competition Review – October	Q3 2010

Appendix A – List of Substantive Questions

Question/ Proposal	Yes	No	Comments
Proposal 1 – Respondents are invited to comment on the proposal in Section 4.5 to review the market and define a roadmap for deregulation of the retail electricity market. Are you in favour of the proposal? Do you think this is the right time? Outline reasons for agreement or disagreement.			
Proposal 2 – The Commission is proposing in Section 5.2 that in assessing the level of competition in the retail market the following factors should be considered; – the number of suppliers active in a particular market – individual market shares of the incumbent (and its affiliates) and independent suppliers – barriers to entry, expansion and exit including: sunk costs, switching systems and processes, branding, non discriminatory network access and access to wholesale product.			
Proposal 3 – The Commission is proposing in Section 7.2 that regulatory price controls should be removed when competition is reached in a particular market where <u>*all*</u> the following criteria have been met;- (i) At least three suppliers active in the relevant market *and* (ii) where there is a minimum of 2 independent suppliers, that at least two of the independent suppliers in a particular market has at least 10% share of load (GWh) in the relevant market. *and* (iii) ESB PES and ESBIE combined serves or will within a defined period 40-50% GWh in the LEU market, 40-50% GWh in Medium-Sized business market, 40-50% GWh in the small business market and 55-60% GWh in the domestic market.			
Proposal 4 – The Commission is proposing in Section 7.4 to review conditions in each market on a bi-annual basis starting in March and October 2010 including an			

assessment of each supplier's market share. The review will take account of the following;- (i) the expected market share of ESB (PES and ESBIE together). This will be based on actual market information from MRSO and CER forecasts. (ii) the expected market share of every other supplier. This will be based on actual market information from MRSO and CER forecasts.			
Proposal 5 – The Commission is proposing in Section 8.3 that further to all the criteria for a competitive market being met in all markets and subject to the DCENR making all necessary legislative changes, the Commission will also take steps to change the form of regulation to reflect the following principles: Price Controls • Removal of all price controls on ESB PES • The removal of any ESB PES Economic Purchase Obligation from ESB PES. Other • Review of the obligation of Non – Discrimination • Review of the designation of ESB PES as the Supplier of Last Resort and the Universal Service Obligation.			
Proposal 6 – The Commission is proposing in Section 8.4 that further to the removal of price controls, the Commission will continue to monitor market activity and any significant change in market conditions, imposing appropriate remedies on ESB PES and/or ESBIE as required.			
Proposal 7 – The Commission is proposing in Section 10.3 that once regulatory price controls have been removed, ESB PES and any other supplier may be required (through licence) to offer tariffs to vulnerable and or other groups of domestic customers, as defined by the Commission, on principles acceptable to the Commission.			
Q1. Are you in favour of the proposals outlined in Section 3.4, to review the market and define a roadmap for deregulation of the retail electricity market? Do you think this is the right time? Outline reasons for agreement or disagreement.			
Q2. In relation to Proposal 1, Section 4.5, respondents are invited to comment on the proposal to define 4 relevant markets for the supply of retail electricity. Are you in favour			

of the proposal? Outline reasons for agreement or disagreement.			
Q3. In relation to Proposal 1, Section 4.5, respondents are invited to comment on whether public lighting should be considered as a relevant market. How should it be treated in a deregulated environment? Outline reasons for agreement or disagreement.			
Q4. In relation to Proposal 1, Section 4.5, respondents are invited to comment on the proposal to consider all domestic customers part of the same retail market. Are you in favour of the proposal? Outline reasons for agreement or disagreement.			
Q5. Respondents are invited to comment on the proposal to asses the level of retail competition using the factors outlined in Proposal 2, Section 5.2. Are you in favour of the proposal? Outline reasons for agreement or disagreement.			
Q6. For each of relevant markets discussed in Section 5.3, 5.4 and 5.5, respondents are asked to consider if there is sufficient activity to consider the removal the regulatory controls in that market. Outline reasons for agreement or disagreement.			
Q7. Respondents are invited to comment on the assessment of the barriers to entry, exit and expansion within the retail electricity market outlined in Section 6. Do you agree or disagree with the preliminarily conclusions? Are there other issues which have not been discussed which would prevent or undermine the development of a competitive market? Outline any suggestions to improve the situation for existing suppliers and new entrants.			
Q8. In relation to Proposal 3, Section 7.2, respondents are invited to comment on the proposal for the thresholds for the removal of regulatory controls in the relevant retail markets for electricity. Are you in favour of the proposal? Outline reasons for agreement or disagreement.			
Q9. Respondents are invited to comment on the options for the review of market conditions in March and October outlined in Section 7.3. Are you in favour of Proposal 4? Should the reviews be historical or prospective? What actions do you think the Commission should take if competition tests fail in subsequent market reviews? Outline reasons for agreement or disagreement.			
Q10. Respondents are invited to comment on the options outlined in Section 8.2 for how the price controls should be removed in the context of only a portion of the relevant business markets reaching the threshold for the removal of the price control. Should the de-regulated customers be			

transferred to ESBIE? Should ESB PES be allowed to serve regulated and unregulated customers or should the price control remain in place until all markets have reached their thresholds? Is there another course of action that you would be in favour of? Outline reasons for agreement or disagreement.			
Q11. Respondents are invited to comment on Proposal 5, Section 8.3, to change the principles of regulation, should the criteria for deregulation be met. Are you in favour of the proposal? Are the principles outlined correct? Should any additional principles apply?			
Q12. Respondents are invited to comment on Proposal 6, Section 8.4, to maintain regular monitoring to ensure that ESB PES & ESBIE continues to operate at or below the defined competitive thresholds. Are you in favour of the proposal? Should any additional monitoring apply? Will competition law be sufficient to deal with any problems? Should a price cap be implemented? Outline reasons for agreement or disagreement.			
Q13. Respondents are invited to comment on Proposal 7, Section 10.3, that ESB PES , ESBIE and any other supplier will be required (through licence) to offer tariffs vulnerable and other groups of domestic customers, as defined by the Commission, on principles acceptable to the Commission. Are you in favour of the proposal? Outline reasons for agreement or disagreement. Are there any other specific consumer measures required with the removal of price controls?			
Q14. Respondents are invited to comment on the interim work programme outlined in Section 11.4 which will develop the current regulatory framework until the roadmap has been implemented (in part or in whole) Are you in favour of this approach? Outline reasons for agreement or disagreement.			

Appendix B – Breakdown of DUoS Categories.

Connection Type	Customer Category
DG 1	Urban Domestic Customers
DG 2	Rural Domestic Customers
DG 3	Unmetered Public Lighting
DG 4	Other Unmetered Connections
DG 5	Low Voltage Non-Domestic Non-MD Customers
DG 5A	Low Voltage Non-Domestic Non-MD Autoproducers (Exporters)
DG 5B	Low Voltage Non-Domestic Non-MD Autoproducers (Importers)
DG 6	Low Voltage Non-Domestic MD Customers
DG 6A	Low Voltage Non-Domestic MD Autoproducers (Exporters)
DG 6B	Low Voltage Non-Domestic MD Autoproducers (Importers)
DG 7	Medium Voltage MD Customers
DG 7A	Medium Voltage MD Autoproducers (Exporters)
DG 7B	Medium Voltage MD Autoproducers (Importers)
DG 8	38kV MD Looped Customers
DG 8A	38kV MD Looped Autoproducers (Exporters)
DG 8B	38kV MD Looped Autoproducers (Importers)
DG 9	38kV MD Tailed Customers
DG 9A	38kV MD Tailed Autoproducers (Exporters)
DG 9B	38kV MD Tailed Autoproducers (Importers)
DG 10	110kV MD Customers
TCON	Connected to the Electricity Transmission System