



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

Review of the Regulatory Framework for the Retail
Electricity Market
Roadmap to Deregulation

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Abstract: The Commission for Energy Regulation has decided on the circumstances under which the price controls should be removed from the Public Electricity Supplier ESB Customer Supply. The Commission also decided 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.

Related Documents:

- CER 09/189: Review of the Regulatory Framework for the Retail Electricity Market: Proposals on a Roadmap for Deregulation

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Executive Summary

The Irish retail electricity market has undergone considerable positive changes in the last 18 months. Recognising the increased level of competition and changing market dynamics in all market segments, especially in the past 18 months, the Commission consulted on proposals to deregulate the retail electricity market in December 2009. In its review, the Commission set out a number of proposals to define a roadmap which would set out the milestones for the deregulation of the electricity market that would see electricity prices for Irish electricity consumers being set by competition rather than by regulation. The objectives of deregulation are to increase choice for Irish consumers, provide further downward pressure on retail prices and stimulate innovation in new retail products.

That process of consultation has resulted in a set of key decisions which will lead to a work programme of significant change to the Irish electricity market. These decisions have been arrived at following extensive consultation with the Commission's stakeholders; electricity industry players in Ireland and Northern Ireland, the Northern Ireland Utility Regulator and the Single Electricity Market Committee, and other relevant state agencies (including MABS, the National Consumer Agency and the Competition Authority), business representatives, consumer groups and relevant expert research groups (including the ESRI). The Commission has also engaged with the Department of Communications, Energy and Natural Resources (DCENR) in discussions on the legal requirements for price regulation. The conclusions in this report also incorporate the findings of direct market research on the experience and awareness of the retail electricity market amongst domestic and business consumers.

The consultation paper set out proposals for defining relevant retail markets and assessing the level of competition in each market in terms of its suitability for deregulation. This paper examined the relevant barriers to market entry, expansion and exit which could potentially constrain the development of competition in each of the defined markets. A number of specific quantitative thresholds for market concentration were proposed for the determination of the level of competition in a particular market. The consultation also sought the views of stakeholders on the proposals for the mechanisms of review, the sequence of deregulation where it applies to different markets and the interim arrangements that would apply until such time as all markets were deregulated. The consultation suggested the need for post-deregulation market monitoring and potential special protections for vulnerable customers in a deregulated market.

The Commission has defined 4 separate relevant markets, currently limited to national boundaries; Large Energy Users, Medium-Sized Business including Public Lighting, Small Business and Domestic. In light of significantly reduced market shares of the incumbent supply company and the extremely high levels of switching, the Commission has concluded that barriers to competition are sufficiently low that deregulation can be considered for all markets.

The Commission has decided to continue with the phased deregulation of the electricity retail market and has determined the following as the appropriate criteria to decide on the deregulation of the specific market:

- (i) There are at least three suppliers active in the relevant market; and
- (ii) There is a minimum of 2 independent¹ suppliers, each of which has at least 10% share of load (GWh) in the relevant market; and
- (iii) ESB PES and ESBIE combined serves or will serve within a specified period a defined percentage of consumption market share in a relevant market. For each of the Business markets, the percentage market share is 50% or less. In the Domestic market, the percentage market share is 60% or less.

There are two additional requirements for the Domestic market. First, switching rates must be greater than 10%. Second, ESB must provide the Commission with a satisfactory commitment for the rebranding of ESB supply companies prior to the deregulation of the domestic market. Thus de-regulation at a market share of 60% is conditional on ESB undertaking to remove the ESB brand from the retail market.

Given the rate of change in the market with very high levels of customer switching, the Commission is mindful of the need to avoid regulatory overshoot by removing price controls when thresholds are met without undue delay. Therefore the Commission is proposing a quarterly forward looking analysis which provides clear signals to the market. Where thresholds have been met at the time of the quarterly review, deregulation will occur with immediate effect, subject to legislative changes. Where thresholds have not been met at the time of the review, a six, three and one month forecast based on average consumption will be made to indicate to industry when deregulation will happen. The Q1 2010 review will be published in parallel with this paper with further reviews each quarter.

All markets will be assessed on their own merits, so that should one or all of the business markets become eligible for deregulation, the Commission has decided that ESB PES will serve both regulated and unregulated customers. This raises some concerns with respect to cross subsidisation and as such the Commission will require ESB PES to demonstrate that separate accounts are held for both business books.

The continued success of the retail market and the further development of competition post deregulation will continue to be of the highest priority. With this in mind the Commission will continue to monitor the market closely, publishing bi-annual retail market monitoring reports. These reports will review;

¹ With no common parent company shared with other suppliers

- Number of suppliers
- Market Share (GWhs) for all suppliers
- Level of Switching
- Revenue data for all suppliers
- Range of tariffs on offer and average prices paid by customers by tariff for all suppliers

Subject to these reviews, should the Commission conclude market dynamics have changed such that if competition and consumers in a given market have been negatively impacted, the Commission will take steps to remedy those market failings. In the first instance, the Commission will adopt a more light handed approach, but consideration will be given to the re-regulation of any market where that is deemed appropriate.

As competition has been established for longer in the business markets, where market research indicates that consumers are more informed about their choices in terms of supply, the Commission has concluded that business customers are driving active switching in all markets. However the Commission agrees with the many respondents who advocated a higher duty of care to domestic customers. In spite of the unusually high level of switching that continues to be observed in the market there is an acknowledged group of customers who are less likely to switch and therefore may be excluded from the potential benefits of competition. In addressing this, the Commission is exploring measures to encourage greater market engagement and stimulate competition. This will include liaising with the Dept. of Social Protection on alternative options in relation to the administration of the Free Electricity Allowance, including the possibility of competitive tendering for supply to these customers.

The Commission notes that this document is not exhaustive. While this paper sets out the core decision on the roadmap, some of the final details of the implementation of this significant programme of work for the deregulation of the electricity market will require further consideration and consultation in the following keys areas;

- Competition review
- Changes to legislation / statutory instruments
- Consumer issues consultation
- Commitment from ESB with regard to the brand

The Commission will consult on a number of customer protection issues including the following:

- Application of the Universal Service Obligation²
- Application of the Supplier of Last Resort³ obligation.
- Application of the Non-discrimination obligation.
- Treatment of vulnerable customers.
- Improving general customer awareness
- Encouraging active market participation among all sectors of the domestic market.
- Improving price transparency.

Wholesale market liquidity, the potential re-integration of ESB generation and supply into one business, global aggregation and the strength of the ESB brand were amongst the issues raised by respondents. With the exception of the branding issue, the Commission is satisfied that all of these issues are currently being addressed in parallel work streams and as such are outside the scope of this decision paper. The SEMC is currently preparing a review of liquidity and market power in the SEM and the impacts ESB deregulation would have on the current arrangements. A consultation on this matter will be published in the summer.

The issue of Global Aggregation⁴ is being progressed through the north / south retail harmonisation work stream with NIAUR, and notwithstanding this the Commission will seek to implement an interim solution which addresses the residual Error Supply Unit as it currently applies to the PES.

As noted in the consultation paper the changes proposed in the roadmap will require legislative and licence changes and are ultimately subject to Ministerial approval. The Commission is engaging with the DCENR in relation to implementing the required changes, and this will be followed by a consultation on the appropriate changes to the PES and independent supplier licences.

Further to the outcome of the competition review, which will determine what, if any, markets are to be deregulated from October 2010, the Commission has also published a consultation on the regulatory arrangements that will apply to those markets that continue to be regulated. These proposals are outlined in a separate draft decision paper⁵.

In publishing its roadmap for deregulation, the Commission is setting the context for a new era for the Irish retail electricity market. As stated in the consultation paper, this process will not immediately affect prices, as the dominant influence

² Universal Service Obligation: PES has a duty to supply any final customer who wishes to be supplied, and as soon as is reasonably practicable.

³ Supplier of Last Resort: PES is required to supply final customers of any other supplier who, for example, goes out of business

⁴ Global Aggregation: PES is charged or paid for any differences between total generation and total demand

⁵ CER/10/042: ESB PES's Revenue Regulation Framework

on Irish electricity prices will remain externally-determined fossil fuel prices. However, the Commission expects that the roadmap represents a clear and logical framework for change where Irish consumers will benefit from new and innovative offerings from their supplier. At the same time ESB and the other industry players will be provided with clear milestones and challenging targets which will deliver the benefits of competition to Irish consumers.

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1.0 Introduction

1.1 *The Commission for Energy Regulation*

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

1.2 *Purpose of this paper*

The purpose of this paper is to outline the Commission's decision with regard to “CER 09/189: Review of the Regulatory Framework for the Retail Electricity Market: Proposals on a Roadmap for Deregulation.”⁶ The Commission has carried out a public consultation on this topic between 02/12/09 and 01/02/10 and has considered fully the comments and submissions received. The Commission has also met with many of the respondents to discuss their submissions. Issues raised throughout the consultation process will be addressed in this paper, as well as outlining the final decision.

1.3 *Comments Received*

The Commission received 21 submissions to the consultation. Submissions were received from the following organisations or individuals:

⁶ Review of the Regulatory Framework for the Retail Electricity Market: Proposals on a Roadmap for Deregulation: [CER 09/189](#)

Respondents	Reference
Airtricity	Airtricity
Bord Gáis Energy	BGE
Chambers Ireland	Chambers Ireland
The Competition Authority	TCA
Eirgrid	Eirgrid
Endesa	Endesa
ESB Corporate	ESB
ESB Customer Supply	ESB PES
ESB Independent Energy	ESBIE
Economic and Social Research Institute	ESRI
Forfás, Industrial Development Authority & Enterprise Ireland	Forfás
Irish Business and Employers Confederation	IBEC
Irish Hotels Federation	IHF
Irish Small and Medium Employers Association	ISME
Kore Energy	Kore
Money Advice and Budgeting Service	MABS
National Consumer Agency	NCA
Northern Ireland Electricity Energy Supply	NIE
Small Firms Association	SFA
Vayu	Vayu
Viridian Power and Energy	VP&E

1.4 Structure of this paper

This paper is structured in the following manner:

- **Section 2.0** provides background information about the Roadmap consultation paper and its proposals
- **Section 3.0** summarises and addresses respondents' comments about the need for a Roadmap for deregulation.
- **Section 4.0** summarises and addresses respondents' comments about how the relevant markets for deregulation should be defined.
- **Section 5.0** provides an analysis and final decision as to the level of competition in each relevant market in terms of the market shares of participants and barriers to entry, expansion and exit.

- **Section 6.0** provides a final decision as to the thresholds for deregulation in each relevant market as well as how these thresholds will be reviewed by the Commission.
- **Section 7.0** sets out a number of decisions in relation to how deregulation will occur including the removal of the price control and other regulatory controls as well as how market will be monitored in a deregulated market.
- **Section 8.0** examines and provides decisions about how vulnerable customers will be protected in a deregulated market.
- **Section 9.0** summarises and addresses respondents' comments about the interim regulatory arrangements.
- **Section 10.0** sets out the conclusions of this decision paper.
- **Section 11.0** outlines the next steps in the roadmap process.
- **Appendix A** contains a list of substantive decisions the Commission has made in this paper.

1.5 Other Relevant Information

If you have any questions or queries about this decision paper, please contact:

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2.0 Background

2.1 Introduction

On December 2nd, 2009, the Commission for Energy Regulation published the consultation paper titled: “Review of the Regulatory Framework for the Retail Electricity Market: Proposals on a Roadmap for Deregulation,” also known as the ‘Roadmap.’ That document consulted on the circumstances under which price controls should be removed from the Public Electricity Supplier, ESB Customer Supply and related matters. This paper answers the questions raised by Roadmap consultation paper and responses to that paper. It will summarise the responses to the consultation and provide a number of decisions which will define the work programme towards deregulation of the retail market. Below is a summary of the genesis of the Roadmap consultation and what was proposed by the Commission in the paper.

2.2 Roadmap Proposals

In its paper End-user Energy Price Regulation⁷ 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 market and jeopardises security of supply. 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 towards a deregulated retail market. Where appropriate a transition period 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.

In response to this, the Commission published a consultation paper CER/09/189, titled; “Review of the Regulatory Framework for the Retail Electricity Market: Proposals on a Roadmap for Deregulation.” This paper examined the current state of the Irish electricity retail market and made a number of proposals regarding deregulation.

The Roadmap paper outlined the current regulatory regime and how it came about. The paper described the current regulatory controls in the wholesale, networks and retail markets including the current controls placed on the incumbent supply companies, ESB PES and ESBIE.

In defining a Roadmap the consultation concluded that the scope for deregulation was limited to the electricity retail market within this jurisdiction. The paper also set out definitions of the relevant markets for deregulation. These were Large Energy Users (LEUs), Medium-sized business, Small business and Domestic. The Commission also made a preliminary proposal to treat Public Lighting as a

⁷ ERGEG: “End-user energy price regulation An ERGEG Position Paper”: [E07-CPR-10-03](#)

separate relevant market but asked respondents to submit their own proposals on Public Lighting.

The Commission set out a range of thresholds for the establishment of an effectively competitive market in terms of the combined market share of the two ESB supply businesses, by load. These were 40-50% in all business markets and 55-60% in the Domestic market. An analysis of the development of competition in these markets suggested that under these thresholds, 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. The paper noted that while it might be premature to describe the domestic market as being effectively competitive, it is showing very positive trends towards that position.

Other factors were assessed to determine at which end of the range, deregulation occurs, including entry barriers such as brand power and ease of customer switching. The paper also suggested a range of options for assessment criteria, proposals on how price controls should be removed and suggested additional measures regarding consumer protection.

Finally this paper sets out the interim measures that will be considered until such time as the markets are deemed to be competitive, including the review of correction factors (which address any over-recovery or shortfall made by the Public Electricity Supplier, ESB PES in the previous year) tariff structures and the upcoming supply price control review.

The Commission noted that while there will be benefits to consumers arising from fully competitive markets, there are some risks that, after deregulation, 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 sought views as to whether, and, if necessary how, any *ex post* monitoring of the market should be used.

2.3 Customer Survey

In conjunction with the NIAUR, the Commission has recently completed a survey of domestic and business electricity customers. While the results of this survey have not yet been published, the Commission has drawn upon the results of this survey for this jurisdiction in this decision paper. This survey has provided a number of key findings which have influenced the Commission's decisions within this document. The key findings are summarised below. The Commission and NIAUR will publish a full report on the survey findings in the near future.

Domestic

- **ESB brand:** The different roles of the ESB businesses are not yet well established, with confusion across most attributes of service - and the ESB brand values centre on reliability and efficiency.
- **The Price of Electricity:** Domestic consumers believe that prices are higher than in other jurisdictions and a high level of profit contributes to this.
- **Competition:** Satisfaction with the existence and level of competition is reasonable. However, competition is driven by media advertising rather than referral – suggesting an immature market. Switching rates may slow as most domestic consumers who have considered switching have not taken action.
- **Switching Process:** High degree of satisfaction with all aspects of the process and delivery of expected benefits
- **Price and Tariffs:** Commitment to a single annual price revision depends on the absence of a price premium for this structure. There is some interest in Time of Use tariffs. Dual fuel offerings are attractive when coupled with a 5% or higher saving

Business

- **ESB Brand:** The different roles of the ESB businesses are well established and the ESB brand values centre on reliability and trustworthiness.
- **The Price of Electricity:** Businesses believe that prices are higher than in other jurisdictions and a high level of profit contributes to this.
- **Competition:** The level and awareness of switching options suggests good competition. However, satisfaction with competition is low suggesting an underlying pricing challenge.
- **Switching Process:** High degree of satisfaction with all aspects of the process and delivery of expected benefits
- **Price and Tariffs:** Businesses are interested in more frequent price revisions, additional information on usage and dual fuel offerings (when coupled with a discount)

2.4 Decision Paper

In the following sections, respondents' comments are summarised for each of the questions posed in the consultation. The Commission's response to those comments and the final decisions relating to the roadmap are also included.

The following sections are structured as per the consultation paper; the development of retail competition, relevant market definition, relevant market analysis, other criteria for determining a competitive market, the determination of competitive markets, proposed changes to the regulatory framework, consumer protection and the interim regulatory arrangements.

3.0 Development of Retail Competition

3.1 Definition of a Roadmap

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 priority is preventing the incumbent from misusing its dominant position through price regulation. Once the market becomes effectively competitive this would no longer be possible, rendering price regulation unnecessary. The Commission examined this transition and gave a preliminary assessment as to the level of competition within the market.

3.1.1 Q1 Definition of a Roadmap

As a result of increasing competition, the regulatory needs of the electricity retail market and its customers are changing. In light of this, the Commission has come to the preliminary conclusion that the price control and other restrictions placed upon ESB PES and ESBIE may be amended or removed in response. The Commission is mindful of the need for regulatory certainty pertaining to such a significant change in the regulatory regime and therefore proposes that a 'Roadmap' for deregulation be put in place.

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.

All respondents agreed with the proposal to review the market and define a roadmap for deregulation in principle. Respondents generally agreed with the economic theory set out in the consultation paper that effective competition is likely to be superior to regulation and therefore a defined plan for bringing about an effectively competitive market is desirable. In this respect, many respondents stressed the need for certainty that a defined plan would bring. While welcoming the proposal, BGE suggested that the Roadmap should cover the gas market as well as the electricity market.

Of those who addressed the question almost all respondents stated that it was the right time to consult on a roadmap. ESB PES agreed with the Commission that the rapidly changing competitive nature of the market indicates that now is the time to set out a Roadmap for deregulation. The Competition Authority stated that another reason why the Roadmap was timely was to address the growing public perception that the price of electricity is mostly driven by retail market policy rather than the price of fossil fuels. VP&E, while welcoming the Roadmap,

stated that the timelines set out in the Roadmap were unrealistic considering all that needs to be done before deregulation can take place.

Many of the respondents commented that there were a number of specific issues that need to be addressed including, branding, wholesale market liquidity, ESB re-integration and global aggregation, as pre-requisites to deregulation. These are described in more detail and addressed by the Commission in later sections.

Commission's Response

The Commission welcomes the respondents' submissions and their positive response to the concept of having a Roadmap for the deregulation of the Irish electricity retail market and agrees that the roadmap should provide certainty. The Commission notes that the decision to define a Roadmap for deregulation of the electricity retail market reflects that the state of competition in the gas market has not yet reached the stage of competition in the electricity market. At the end of 2009, BGE still held 98% of the domestic gas market by consumption and 71 and 72% of the Non-Daily Metered and Fuel Variation Tariff markets. Therefore, the Commission will consult on a Roadmap for the deregulation of the gas market separately, when the time is appropriate.

Should the decision be made to deregulate some or all of the relevant markets at the earliest identified date, October 1st, the Commission is confident that all the necessary provisions to facilitate this will be in place at that time.

Commission's Decision

Noting the overall positive response to the Roadmap for deregulation, the Commission has decided to proceed with defining the Roadmap.

Decision 1 - The Commission will define a Roadmap for the deregulation of ESB PES.

3.2 Summary

The proposal to create a Roadmap for the deregulation of the retail electricity market was well received. The Commission expressed confidence that the Roadmap can allow for deregulation as early as October 1st 2010. The Commission has decided to progress with the Roadmap.

4.0 Relevant Market Definition

4.1 Introduction

In order to determine the level of competition within the Irish retail market, it is necessary to define its boundaries. In doing this, the Commission considered the following:

- (i) if gas and electricity are separate retail markets
- (ii) if the electricity market is defined by national boundaries
- (iii) if there are separate retail electricity markets for different categories of customer

The responses submitted with respect to these preliminary views are addressed in Question 2, which relates with the Commission's proposal to split the retail market into four relevant markets. In Question 3, the Commission asks whether public lighting should be defined as a separate relevant market or should it be combined into one of the four proposed markets. In Question 4, the Commission asks whether domestic customers make up a single market or a number of relevant markets.

4.2 Single Market for Electricity & Gas?

The only respondent to address the issue, BGE, agreed with the Commission that since customers cannot readily switch between electricity and gas without significant expenditure, the gas and electricity markets should be considered as two separate markets.

Commission's Response

There were no issues raised with the proposed definition to review retail gas and electricity as separate markets.

Commission's Decision

The Commission will review the gas and electricity markets as separate markets.

Decision 2 – Retail gas and electricity markets will be reviewed as separate markets.

4.3 Single Market for Ireland Only?

BGE and ESB PES agreed that the current limitations in the switching systems in Northern Ireland means that Northern Ireland cannot be considered part of the market at present but that this situation should be reconsidered when the Harmonisation Project is completed in 2012. NIE disagreed that the current switching systems in Northern Ireland prevented business switching and therefore proposed that an All-Island retail market existed for business customers.

Commission's Response

The Commission notes NIE's comment that the systems in Northern Ireland do not provide the same level of constraint on switching for larger customers. However, suppliers in Northern Ireland can compete unrestricted in all segments of the Irish market, but the same is not true in reverse for all markets. As such the jurisdictional markets should be considered as separate for the purposes of this review. This situation will be reviewed when the Harmonisation Project is complete in 2012.

Commission's Decision

Noting the unidirectional constraint between jurisdictions, the Commission has concluded that the Irish market and the Northern Irish market should be considered separately for the purposes of the Roadmap consultation. This situation will be reviewed when the Harmonisation Project is complete in 2012.

<p>Decision 3 - For the purposes of this review the retail electricity market will be defined at national boundaries. This definition will be reviewed upon the completion of the Harmonisation Project in 2012.</p>

4.4 Defined Markets

In the Roadmap consultation, the Commission proposed that there were four relevant markets that should be considered for deregulation: Domestic, Small Business, Medium-Sized Business and Large Energy Users. The Commission also proposed that Public Lighting be treated as a relevant market and asked respondents how this market should be treated. The following section outlines the responses to these proposals and decisions about the makeup and treatment of the relevant markets.

4.4.1 Q2 Four Relevant Markets

In defining the relevant markets CER considered the supply and demand side characteristics of the retail market including; Customer Classification, Market Opening, Pricing, Countervailing Buyer Power, Conditions of Supply and Economics of Supply. The market was reviewed with reference to each of these characteristics with the Commission coming to the preliminary conclusion that there were 4 relevant markets as set out in Proposal 1.

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.

There was broad agreement with the Commission’s preliminary view of the four markets. Airtricity stated that the proposed breakdown reflected the breakdown that is used by most suppliers in defining their product offerings for potential customers. Endesa supported this view, stating that the range of price offerings to customers differs greatly, depending on what market they belong to. Forfás stated that the proposed definition provided a reasonable degree of differentiation between business customers.

The ESRI and the Competition Authority agreed with the proposed definitions though noted that countervailing buyer power was a more appropriate measure of the level of competition than of market definition. Both NIE and the ESRI questioned whether the ‘chain of substitution’ effect can be applied to business markets. That is, can two small businesses combine to become a medium-sized buying group? Kore Energy & VP&E question the sustainability of competition in one particular market in the event that the other market segments are deregulated.

A number of respondents proposed alternative market definitions. NIE proposed that there are two markets, small users and large users. The reason for this is that most supply companies on the island of Ireland compete in both jurisdictions. While switching systems to allow domestic switching won’t be in place till 2012, there already is switching allowed in business markets. NIE contends that there are only two markets as, from a supplier point of view, supplying all large customers requires resources of one type whereas domestic customers require different resources in terms of billing, customer care etc.

ESBIE stated that the Commission should follow the EU definition of having only three markets consisting of LEUs, SMEs and domestics. VP&E didn't support the proposal to split the market into 4 stating that the segmentation merely tracks the existing tariff structures which in turn reflect the legacy of historic and relatively crude metering that don't reflect the management of wholesale risks and supply costs. They stated that from a supplier point of view, the same billing and customer query arrangements will apply across all non-interval metered customers. Therefore the market should not be divided but treated as a whole and deregulated in one change.

Commission's Response

Regarding the methodology used by the Commission, the Commission agrees with the ESRI and the Competition Authority that countervailing buyer power should not be used in defining markets. It rather should be used a part of competitive market analysis. However, countervailing buyer power was not the defining factor in deciding the make-up of any of the relevant markets.

The ESRI and NIE also questioned whether two small businesses could combine to be classified as a medium-sized business. This is not the case, as the businesses would require separate metering points and therefore separate connections so as they could discern how much electricity each is using. The two businesses could combine to increase their countervailing buyer power but, as has already been noted, this is more relevant to the level of competition in markets.

Kore Energy questioned the sustainability of a regulated market, should the other markets be deregulated. Price regulation is a proxy for effective competition necessitated by the presence of a potentially dominant player in the market. Should the other markets become deregulated, price regulation will make sure that the dominant player charges a cost-reflective price, ensuring sustainability in the market.

NIE's alternative proposal for market definition focused on supply side issues, stating that the resources needed to serve different markets is largely determined by the billing and customer relationship systems required. However, as the EC's *Market Definition Notice* points out, demand side substitutability "constitutes the most immediate and effective discipline on the suppliers of a given product, in particular in relation to their pricing decisions"⁸ than supply side substitutability, with the latter taken into account at the assessment stage of competitive analysis.

⁸ European Commission Notice on the definition of relevant market for the purposes of Community competition law, paragraph 13 [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997Y1209\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997Y1209(01):EN:HTML)

With regards to ESBIE's point about the Commission being consistent with the EU classification of three distinct markets, the Commission has followed EC guidelines as to defining relevant markets for the Irish market. VP&E's assessment of differing markets relies solely on what billing and customer care systems are required. It does not take into account the demand side considerations which were assessed in the consultation.

Commission's Decision

The Commission has concluded that the proposals given in the consultation in relation to the four relevant markets are appropriate as definitions for the Roadmap. Therefore the market definition remains unchanged from that proposed in the consultation paper.

Decision 4 - The Commission has decided that the electricity retail market will be defined by 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)

4.4.2 Q3 Public Lighting

The Commission sought the opinion of respondents with regards to how public lighting should be categorised. While it could be considered as a part of the business markets described in Question 2, the Commission decided that given the different nature of consumption profiles and because this segment has been practically uncontested to date, the Commission proposed to deal with Public Lighting as a separate business market.

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.

Opinion was divided as to whether public lighting should be considered a separate relevant market or part of one of the defined business markets. Among the respondents who indicated that public lighting should not be treated as part of one of the relevant business markets, there was further disagreement as to how it should be treated. There was also disagreement among respondents who agreed with the Commission's preliminary view that public lighting should be considered separately. In summary, ESB PES, Airtricity, Endesa, ESRI, VP&E, IHF and the Competition Authority thought the market should be treated separately while NIE, Forfás & BGE thought the market should be incorporated into one of the business markets.

Among those who considered public lighting to be a separate relevant market, there was differing reasoning as to why this should be the case. ESB PES stated that as there are no structural or regulatory issues preventing further development of competition, this market should be deregulated at the same time as the business and domestic sectors. The Competition Authority and ESRI stated that Public Lighting appeared to be a separate market as public lighting customers were a distinct group that could be subject to price discrimination. The IHF, Airtricity, Endesa & VP&E stated that due to the lack of competition, the Commission should not consider this market for deregulation at this time.

BGE stated that EU law provides that all customers, regardless of their consumption patterns, should be eligible to choose an alternative supplier and therefore should be included as part of a relevant market, potentially the SME market. NIE stated public lighting is not a distinct market as a public lighting customer is simply a large electricity customer with a predictable demand. Forfás noted that there is potential to include public lighting as part of one of the business markets, seeing as schools and hospitals are included in these markets.

Several independent suppliers stated that there were barriers to entry in serving public lighting customers, though only one respondent elaborated in any detail on what these issues are. BGE asserted that the meter provisions and data services provided by ESB Networks are not sufficient to provide a flexible service to public lighting customers. Endesa added that the ESB brand is the main barrier to entry into this market, as many county councils presume that the ESB is the sole provider of public lighting.

The IHF stated that the market should be continue to be regulated and that it should be ensured that excessive profits are not earned in the sector, which would increase costs to local authorities. On the other hand, Forfás observed that deregulating public lighting may encourage the state authorities to procure electricity more strategically and at potentially more attractive rates if procured centrally.

Commission's Response

The Commission agrees with NIE and Forfás that Public Lighting is part of one of the existing business markets. Public Lighting customers are characterised by having a large predictable load that should be and are generally subject to government procurement guidelines, like hospitals and schools. Therefore, it seems reasonable to consider Public lighting as part of the Medium-Sized Business market.

Regarding barriers to entry, BGÉ and Airtricity stated that the meter provisions and data services provided by ESB Networks are not sufficient to provide a flexible service to public lighting customers. The Commission is committed to

consulting with suppliers through the Industry Governance Group to improve the current processes so as to remove any such barriers. Endesa stated that the ESB brand was also a barrier to entry to the market as many city and county councils consider the ESB to be the sole provider of public lighting. However, given the limited number of councils, who operate on limited budgets and employ purchasing managers, it would seem reasonably straight-forward to inform them that the market is open to competition. The Commission also notes that VP&E have captured 14% of Public Lighting load in the last six months, indicating that the market is open and starting to see competition.

The Commission also notes the suggestion made by Forfás that Public Lighting should be purchased centrally by the government. While such an action is not within the remit of the Commission, the idea has merit and should be referred to the relevant government department by Forfás.

Commission's Decision

The Commission has concluded that Public Lighting is part of the Medium-Sized Business market. It will work with industry participants to ensure that any process restrictions are addressed through the Industry Governance Group.

Decision 5 - Public lighting will be reviewed as part of the Medium-Sized Business Market.

4.4.3 Q4 Single Domestic Market?

The Commission considered whether the domestic customers consisted of a single market or a number of domestic markets. The Commission examined whether there were any particular subsets of domestic customers that faced additional barriers which would deter switching and encourage hypothetical monopolist price rises. In particular the Commission considered low consumption customers and customers who are subject to special credit management arrangements. The Commission proposed that domestic customers formed a single market while acknowledging that it is still early days in terms of domestic competition and that as competition develops, further evidence on this issue may arise, which could allow for a re-examination of the matter.

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.

All respondents that answered this question agreed with the proposal apart from VP&E.

Those in favour included, Endesa, BGE, Airtricity, ESB PES, NIE & the IHF. ESB PES stated that competition in the domestic sector is intense and that there are

no barriers, regulatory or otherwise to impede customers from making choices of supplier. Therefore, any further sub-division of the market is unnecessary. The ESRI, in support of the Commission's proposal, also stated that even if pre-payment and credit risk customers could be readily identified at the moment of selling, they could defeat any hypothetical monopolist price increase by switching supplier. The ESRI considered that there are no further market segments within the domestic market.

While agreeing with the Commission, BGE noted that administrative and regulatory barriers relating to pre-payment and free electricity allowance customers need to be removed to ensure that all customers benefit from competition.

The only dissenting comment was from VP&E, which stated that since small business and domestic customers have similar meters and market dynamics, these customers should be considered part of the same market.

Commission's Response

The Commission notes BGE's comments that barriers to switching associated with the Free Electricity Allowance and pre-payment systems must be addressed. The Commission is currently in the process of working with industry participants to address these issues. This includes working with the Department of Social Protection on options for administering the Free Electricity Allowance where one approach would be for the Department to tender for one supplier of electricity for these customers.

Regarding VP&E's comment, the Commission does not agree that domestic and small business customers should be considered as part of the same market. Small business and domestic customers have different load profiles, reflecting that small business demand most of their electricity during normal business hours while domestic customers collectively generate a peak in demand between 5pm and 7pm. At a demand level, a domestic customer has more opportunity to adjust their consumption in response to price changes. For example, a domestic business customer on a day/night meter can run their dishwasher when their night meter is running to take advantage of the lower price. A restaurant, on the other hand does not have this flexibility when it comes to running its dishwasher. Legacy metering systems and connection points provide real differentiation between customers in terms of how they are served and the products they are offered. They allow suppliers to distinguish between business and domestic customers for the purpose of price discrimination and product differentiation. As such the Commission proposes that small business and domestic customers constitute different relevant markets.

Commission's Decision

The Commission has determined that for the purposes of this review domestic customers will be defined as a single relevant market. The Commission has concluded that there is no specific subset of customers that could be considered a separate market nor does the domestic market constitute part of another relevant market.

Decision 6- All domestic customers are part of the same relevant market.

4.5 Summary

The Commission has come to a number of conclusions regarding the definition of the market and its constituent relevant markets. Firstly, the Commission has decided that the market is confined to the sale of electricity to final customers within this jurisdiction. Secondly, the Commission has decided that there are four relevant markets, Large Energy Users, Medium-Sized Business (which includes Public Lighting), Small Business and Domestic Customers. The Commission has committed to working with industry participants to ensure any process issues relating to barriers to switching will be addressed.

These are the markets that the Commission will subject to a competitive assessment in order to determine whether the market should be deregulated.

5.0 Relevant Market Analysis and Determining a Competitive Market

5.1 Introduction

Having defined the relevant markets, the Commission went on to assess the level of competition within each of these markets. In particular, the Commission focused on quantitative and qualitative indicators of the level of competition such as market share and barriers to entry. This section begins with an assessment of what criteria are to be used for the competition review. It then goes on to examine the qualitative assessment of competition within each relevant market and whether there is enough competition within each market to consider deregulation at this time.

5.2 Market Analysis

This section focuses on the broader indicators of competition. The Commission asked whether the qualitative and quantitative criteria identified by the Commission in the consultation are appropriate.

5.2.1 Q5 Factors for Competition

In determining the level of competition within each relevant market the Commission proposed to use both qualitative and quantitative indicators. The consultation proposal is set out below:

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.

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

Of those who commented on the proposal, all respondents agreed with the Commission's general approach and the factors outlined. A number of the respondents proposed additional factors that should be considered including

switching and sustainability. Many respondents gave assessments on the barriers to entry, expansion and exit suggested by the Commission. These specific comments are addressed in Question 7.

ESB PES suggested that switching should not just be assessed in the context of a potential barrier but that the switching rate should be added to the three existing criteria as it is a dynamic indicator of competitive activity. ESB PES cited the business sectors where the relative market shares of suppliers has not changed significantly from one year to another, yet there has been a considerable level of switching. This indicates that suppliers are engaging actively with customers to maintain market share and therefore competitive rivalry among them is strong. A number of other suppliers suggested that data on the switching levels for each of the relevant markets should be presented as well as the market as a whole.

Regarding the assessment of switching, Airtricity and VP&E stressed the importance of multiple switching (that is switching supplier more than once, in a given period of time). They proposed that switching should be examined over time in order to assess the longer term switching patterns, to ensure that the high switching trends seen to date are not erroneous.

Bord Gáis suggested that the Commission should also look at analysing whether competition can be sustained in the long run should ESB PES drop prices in response to the erosion in its market share. It also suggested making a comparative analysis of competition in other energy markets. Finally, BGE suggested that the proposals focussed too much on recent trends, stating that ESB PES's market share has been stable in business markets over the past few years while ESBIE's market share has increased and cautioned that 2009 looked to be atypical, rather than an indicator of a firm trend.

Commission's Response

In assessing the level of competition in the retail market, the Commission recognises that the switching rate is a very useful indicator of activity in the retail market. The Commission notes that even though market shares may not change significantly from year to year, a high switching rate demonstrates that there is a high level of competition in the market. Therefore, the Commission will add the switching rate to the quantitative measurements it assesses in its competition review.

In the market that has been open to competition the longest, the LEU market, 81% of switchers between March 2009 and February 2010 are switching for the second or subsequent time. This percentage drops for Medium-Sized (49%) and

Small Business (43%) customers as these markets have not been open to competition for as long. The Commission notes that multiple switching will gradually increase as a proportion of overall switching over time based on data from the MRSO.

The Domestic market has only recently seen a large amount of switching for the first time. In its recent customer survey the Commission assessed the likelihood of customers switching supplier again. The survey informed the Commission that:

97%	of domestic switchers described the experience as easy or very easy.
85%	of domestic switchers were satisfied with the service provided by their new supplier.
72%	of domestic switchers would switch again for a 5% saving.
90%	of domestic switchers would switch again for a 10% saving.
62%	of domestic switchers would switch again for energy advice or an online billing facility.

The Commission is of the view that in a competitive market all switches count as an expression of customer choice and therefore do not propose to distinguish between single and multiple switches. The Commission is satisfied that a single switching metric is a reasonable measurement of market activity for the purpose of the competition review. The Commission is already satisfied with the levels of single and multiple switching in the Business markets, therefore the Commission will only apply an analysis of the rate of switching to the less mature Domestic market. Further information is provided in relation to this in response to Question 9.

Sustainability

Bord Gáis suggested that the Commission should also look at analysing whether competition can be sustained in the long run should ESB PES drop prices in response to the erosion in its market share. The Commission notes that deregulation will only occur when it is satisfied that the ESB supply businesses are unlikely to be able to abuse market power in the relevant retail markets and the relevant structures have been put in place to allow the full development of effective competition. Under this scenario, any anti-competitive strategy employed by the ESB supply businesses will be constrained by the actions of its competitors, its customers and, if necessary, competition law and license provisions.

BGE also suggested that there is no comparative analysis of competition in other energy markets. The Commission notes that the Roadmap consultation considered the experience of deregulation in the UK, Sweden, Norway, Texas, Maryland and Illinois and noted the key lessons from those markets. For example, the Commission noted the importance of the regulated cost of

electricity matching the actual price of electricity in ensuring that prices do not rise substantially as a result of deregulation.

Commission's Decision

The Commission has concluded that the factors outlined in the consultation for assessing the level of competition in the retail market are appropriate. However, noting the responses, the Commission has decided to also consider the level of switching in a relevant market in terms of determining the level of competition in the Domestic market.

Decision 7 - The Commission has decided 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, the level of switching in a relevant market, branding, non discriminatory network access and access to wholesale product.

5.2.2 Q6 Sufficiency of Competitive Activity

Using the indicators outlined in Proposal 2, the Commission provided an overview of the current state of competition within each of the 4 proposed relevant markets.

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.

The opinions of the respondents can be divided into three categories. ESB PES stated that there is sufficient activity to consider the removal of the regulatory controls in all markets. Independent suppliers stated that a number of issues need to be resolved before deregulation can even be considered, these issues are outlined below. The Competition Authority and Forfás proposed that deregulation should be considered for business markets but noted reservations about the domestic market at this time.

ESB PES pointed to the significant increase in the level of competition in 2009, especially in the domestic sector, proposing that the switching rate in 2009 has demonstrated that customers are ready to participate in a competitive market. Noting the level of market activity, ESB PES proposed that the Commission should consider the immediate deregulation of all markets as any delay would

disadvantage customers. NIE supported this in part; stating the level of concentration in the business markets justified an immediate considerable reduction of regulatory control.

VP&E and Endesa both stated that the Commission had given insufficient weighting to the HHI. Both respondents described the HHI as a key metric for measuring dominance in the SEM as part of the market power mitigation strategy. They pointed out that none of the relevant retail markets proposed reached the 1,800 point threshold that indicates that dominance is no longer a factor in the market.

Airtricity and VP&E identified a number of issues that they proposed were prerequisites to deregulation; the ESB brand, wholesale market liquidity, ESB reintegration and global aggregation. These issues were also raised by other independent suppliers as potential barriers to entry, expansion and exit to be addressed, but not as prerequisites. These issues are considered in detail as part of the responses to Question 7.

While the Competition Authority noted that the business markets are exhibiting high switching rates and that LEUs especially hold countervailing buyer power, they were unsure if switching activity has developed in the domestic markets to the point where removal of the regulatory controls can be considered, where domestic customers possess no countervailing buyer power. Therefore they were unsure if the domestic market should be considered for deregulation and called for more information regarding consumers' views of the switching options available to them. Forfás broadly echoed this sentiment.

Commission's Response

With regards to HHI, the Commission notes the Competition Authority comments that while it is a useful indicator of concentration it is not the sole determinant of the level of competition in a market. In particular, the HHI is most frequently used in merger analysis in deciding whether to permit greater concentration, whereas here the issue is whether competition has developed sufficiently as to permit flexibility in setting prices. When the HHI is used in the SEM, the context is that all licensed suppliers are required to purchase their energy from a gross mandatory pool and cannot negotiate an alternative price with generators (with the exception of financial hedges). This restriction on a supplier's ability to choose their generator in the wholesale market reduces the influence of suppliers countervailing buyer power. Therefore, the market concentration of generators, of which HHI is a measure, takes on a greatly increased importance as a measurement of dominance. This is not the case in the retail market where customers are potentially capable of curbing market power by such actions as switching supplier and, in the case of larger customers, exercising countervailing

buyer power. Therefore, the importance of HHI as a measurement of dominance is diminished somewhat relative to its importance in the wholesale market.

The Commission also notes respondents' comments about sustainability and the domestic market having only opened up to competition recently. The Commission acknowledges the rapid pace of change but also suggest that the domestic market will have to meet the thresholds set out by the Commission in this decision paper before deregulation can take place. It would seem prudent to consider the domestic market for deregulation rather than exclude it because competition only entered the market in February 2009.

Commission's Decision

The Commission has concluded that there is enough activity in each of the relevant markets to consider deregulation.

Decision 8 - All relevant markets will be considered for deregulation.

5.3 Other Factors for Determining a Competitive Market

The Commission asked respondents whether the assessment of the barriers to entry was correct and then asked respondents if the barriers to entry, expansion and exit within each relevant market were sufficiently low to consider the market for deregulation.

5.3.1 Q7 Assessment of Barriers to Entry

Utilising the qualitative indicators set out in Proposal 2, the Commission assessed the barriers to entry, expansion and exit of the electricity retail market.

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.

ESB PES agreed with the Commission's preliminary conclusions while the independent suppliers generally suggested that there were additional barriers that the Commission didn't consider sufficiently in the consultation.

Sunk Costs

Aside from the cost of challenging the incumbent brand the Competition Authority identified billing systems and licensing requirements as the largest sunk costs a new entrant would face. ESB PES stated that, regarding sunk costs, entry to the retail market does not require a major financial investment. It is possible for an entrant to stage its investment in line with the size of market being served. Furthermore, new entrants may leverage off systems and processes developed in other jurisdictions, minimising the cost of entry to the Irish market.

Non-discriminatory Network Access

ESB PES agreed with the Commission that Distribution System Operator unbundling provided for non-discriminatory network access. The Competition Authority stated that the most efficient way to prevent any discriminatory behaviour would be ownership unbundling. VP&E stated that, in terms of non-discriminatory network access, while there are no concerns from a supply point of view, there are problems for micro generation on which independent suppliers may depend to hedge the exposure to Pool prices.

ESB Brand

Airtricity, Endesa and VP&E stressed the importance of brand as a barrier to market entry where the ESB brand is synonymous with the generation, supply and transportation of electricity. Both Airtricity and the Competition Authority stated that many customers have little understanding of the separation of ESB businesses, which leads to confusion. Many independent suppliers also noted that such confusion is not permitted under the 3rd Package, which mandates that a vertically integrated utility's supply and distribution arms must carry separate brand names if it causes confusion.

ESB PES, on the other hand, stated that the ESB brand is not a significant barrier to entry, arguing that significant switching in 2009 illustrates that customers are primarily concerned about price. ESB PES also stated that its competitors in the domestic market, Bord Gáis and Scottish and Southern Energy are very strong brands in their own right. Additionally, they stated that there is no evidence of customer confusion caused by the communication and branding strategy of ESB Customer Supply which means that a change of brand is unnecessary under the 3rd Package provisions.

In terms of branding, the ESRI observed that a brand can have a chilling effect on switching, thereby reducing market activity and decreasing the likelihood of customers moving away from the incumbent but noted that there was little research to draw upon in terms of the factors that determine switching in Irish utility markets.

Wholesale Market Liquidity

BGE and Airtricity stated that they did not think that the wholesale market had been fully considered in the consultation. BGE asserted that the current arrangements were not adequate to support competition in the retail market, arguing that there needed to be greater transparency and certainty regarding the availability and pricing of CfDs before access to wholesale product could be considered to be available to all suppliers on a fair, reasonable and non-discriminatory basis. BGE called for mandatory ESB support of the wholesale market in excess of the current SEM arrangements until the level of wholesale product liquidity within the market had reached an adequate level.

VP&E stated that the current arrangements for directed and non-directed contracts in the SEM did not provide the flexibility for a new entrant supplier to fine tune its wholesale requirements to a constantly changing customer portfolio.

Endesa identified wholesale market liquidity as the prevalent barrier to entry and suggested this could be mitigated by the introduction of an intraday market and development of a liquid CfD trading platform.

ESB agreed that wholesale market liquidity was a potential barrier to entry and committed itself to engaging with all market participants to maintain and develop an appropriate wholesale market environment.

ESB reintegration

Independent suppliers stated that reintegration of ESB's generation and supply businesses could result in the foreclosure of the retail market to independent suppliers, which would make their position in the retail market untenable. VP&E were primarily concerned with the effect the reintegration of ESB's two generation arms would have on wholesale market liquidity.

Global Aggregation

VP&E and Airtricity stated that global aggregation must be implemented before deregulation can take place. The current PES aggregation arrangements mean that at present PES shoulders the risks associated with the mismatch between the profiles and actual demands of the customers of independent suppliers, and their associated loss factors. Global aggregation would allow this risk to be shared across all suppliers. Airtricity said that global aggregation must be implemented to allow all suppliers compete on a level playing field. VP&E doubted that PES would give up its K-factor until global aggregation is implemented.

Switching

ESB PES observed that the switching rate was very high in 2009 and that 16,000 customers on the Department of Social Protection Household Benefits Package switched away from ESB PES in 2009, indicating that switching is not a problem in any part of the market. BGE and Airtricity state that administrative and regulatory barriers hinder competition for FEA, pre-pay customers and micro-generation tariffs and that these barriers need to be addressed by the Commission.

VP&E and Endesa expressed concerns about the sustainability of 2009's high switching rate with VP&E stating it was driven against a backdrop of a mismatch of ESB PES's retail price and the subsequent fall in wholesale prices seen by new entrants into the domestic market. VP&E called for more time to be allowed in order to establish that competition can be sustained while Endesa called for minimum prices for all tariff categories in order to keep competition sustainable.

The ESRI said that the cost of switching should also be considered. These costs are not just financial but are also costs associated with customer time and effort to arrange a switch and the cognitive costs associated with processing the information and decision making. ESRI cited evidence that these costs matter in terms of determining the degree of effective competition.⁹ In terms of encouraging switching, they warn that if a customer is given too many options and too much information, a customer is likely to assume, perhaps correctly, that they are more likely to make a mistake and so to be less inclined to proceed. The ESRI also pointed out that customers are more likely to switch if they have experience of switching in other markets.¹⁰ They stated that this is important to consider as they suggested that the Irish switching experience in other utility markets remains relatively low.

The Competition Authority concluded that there were low barriers to switching but suggested that the situation could be improved further by perhaps removing any remaining search costs, raising awareness of the ease of switching and removing the perception that switching from ESB PES may jeopardise ESB Networks related service quality.

BGE stated that the 'stickiness' of customers is to the advantage of the incumbent and is therefore a barrier to entry. BGE said that these customers should be targeted in an education campaign to ensure the removal of this barrier.

The ESRI also identified customer inertia as a switching related barrier to entry. Because there are a very large number of potential decisions any individual could take that would be likely to save them money or improve their welfare, a

⁹ Wilson and Waddams, 2005, in the UK electricity market

¹⁰ Chang and Waddams (2008)

substantial proportion will simply fail to get around to switching electricity supplier. The ESRI advocated customer surveys and other research to monitor customer behaviour so as to determine impediments to switching.

Other Comments

BGE stated that competition has not sufficiently developed in the domestic market to consider deregulation, citing other Commission analysis with regards to the gas market which requires that switching be demonstrated over a number of years before deregulation could occur.

BGE also stated that it could not support the removal of regulatory controls until there is a clearer picture of the subsequent regulatory regime.

Commission's Response

Sunk Costs

With regards to the sunk costs, the cost of entry into the retail market is low in comparison to the generation market. An electricity supply license application costs €256 to process. In addition to this the other costs associated with supply, namely billing and customer care systems, are entirely scaleable. Therefore a new entrant can increase its investment in these systems as the company grows. Regarding the brand, the Commission notes that the removal of the brand from the supply company can significantly lower the brand related costs of a new entrant.

Non-discriminatory Network Access

The Commission acknowledges the respondents comments regarding non-discriminatory network access. The Commission notes suppliers have voiced no dissatisfaction with the current arrangements. Regarding micro generation, the Commission has already addressed this comment with regards to switching.

Branding

The Commission notes respondents' comments that a powerful brand like ESB is a potential barrier to entry and switching. While the ESRI has pointed to the example of the re-branding of Telecom Éireann as Eircom, which did not have any appreciable effect on competition, the Commission is mindful that it can reduce the costs of new entrants. The recent success of the independent suppliers in the domestic market is as a result of significant and sustained advertising by both companies.

ESB Networks and ESB Customer Supply have been branded separately for over ten years. Recently, however the joint CER/NIAUR customer behaviour

survey found that, 28% of domestic customers believe that their supplier is responsible for power failure repair and 25% believed their supplier was responsible for grid maintenance. This demonstrates that some confusion persists among domestic customers as to responsibility for basic service provisions. The Commission does not consider it appropriate that the protection of customers associated with regulated tariffs should be removed until such time as this confusion is addressed, as it may act to limit certain customers' confidence in alternate suppliers. This is given further backing by the EC 3rd package which requires removal of any confusion between the Networks owner and suppliers.

The Commission recognises that rebranding is a significant and complex undertaking for ESB and requires careful planning and implementation to avoid customer confusion and uncertainty.

The Commission has decided that ESB must provide the Commission with a satisfactory commitment including any appropriate transitional arrangements for the rebranding of ESB supply companies prior to the deregulation of the domestic market.

Wholesale Market Liquidity

The consultation paper stated that the satisfactory availability of wholesale products was a necessary condition for effective retail competition, and is in agreement with respondents in this regard. However, as stated in the consultation paper, the SEM Committee is progressing a parallel work stream to improve wholesale market liquidity. A consultation on this matter should be published in the summer. Any proposals from this work stream will be the subject to a separate consultation and decision by the SEM Committee. Notwithstanding the work of the SEM Committee, the Commission is of the view that the removal of price controls will not adversely affect wholesale products currently on offer. Indeed, the Commission would re-state the view expressed in the consultation paper that retail de-regulation can only proceed fully if there is no negative impact on wholesale market liquidity.

ESB Reintegration

Many of respondents have made direct associations between the deregulation of the retail market and the full reintegration of ESB generation and supply. In the consultation paper the Commission was clear in decoupling these issues as the SEM Committee had not taken a decision at that time as to whether or not the reintegration of ESB generation and supply was a SEM matter. The SEM Committee has since considered this matter and has reviewed a proposal from ESB with respect to the reintegration of its respective generation and supply businesses. The SEM Committee decided that the reintegration of ESB is a SEM

matter. The SEM Committee has established a work stream to look at the areas of market dominance and liquidity. This work will progress over the summer months and will include consideration of ESB's reintegration proposal.

The SEM Committee noted that CER's roadmap allows for the integration of ESBIE and ESB PES. This was considered to be, essentially, a retail matter. However, the extent to which such integration impacts on the wholesale market will be considered as part of the above mentioned SEM work stream.

Global Aggregation

As part of the work on the harmonisation of the retail market switching systems, and the specification of the Enduring Solution project in NI, the RAs committed to the implementation of a Global Aggregation solution. This is being progressed through a working group of the Trading and Settlement Code (T&SC) Modifications Committee. This work will see an all island GA solution implemented in conjunction with the Harmonisation Project go-live in Q1 or Q2 2012. The Commission notes however that given the change in market dynamics the Error Supply Unit (ESU) which is currently attributable to the PES only is allocated as a residual across a diminishing number of customers. With increasing customer switching away from PES and the prospect of one or more markets being deregulated the ESU will be a disproportionate burden on remaining PES customers. Therefore the Commission will require ESB Networks to develop an interim solution, which will level the playing field with respect to the allocation of the ESU until such time as the harmonised Global Aggregation solution is implemented.

Switching

The Commission notes that the switching rate will be used as a metric in the competition review to assess the level of activity in a market. This section examines switching as a barrier to entry.

Regarding those customers on the Free Electricity Allowance, these customers are already facilitated by the switching process. As ESB PES pointed out 15,500 of these customers have switched their supplier. While this process is satisfactory for the purpose of the Roadmap, the Commission is working with the Department of Social Protection to further enhance this process.

The pre-payment arrangements currently offered by ESB Networks are for debt recovery purposes only. The Commission is currently working with industry participants and social partners to allow all suppliers utilise this facility and expects to have a solution in place in the short term.

In relation to micro generation, the Commission notes that the manual processes, which currently support approximately 200 customers, are only available to one supplier. To date only ESB CS has offered micro generation tariffs to domestic consumers, however the processes are currently being amended to facilitate an immediate manual solution for all suppliers through the Industry Governance Group. ESN is also looking at an enduring solution, which will be part of the Central Market Systems and will deliver a more sustainable solution.

The Commission agrees that there are search costs associated with switching and that difficulties in price comparison can increase these costs. However, this must be balanced with the need for innovation in tariff provision among suppliers in the interest of providing tariffs that suit their customers' differing requirements. The Commission agrees with Bord Gáis and the Competition Authority that education will help reduce impediments to switching. The Commission notes that any such education campaign must be targeted in order to be effective.

Commission's Decision

The Commission has decided that the barriers to market entry are sufficiently low that all relevant business markets should be considered for deregulation. However, full market deregulation of the domestic market will only be considered in the context of a commitment from ESB with respect to rebranding its supply businesses.

Other potential issues identified by respondents such as global aggregation, ESB reintegration and wholesale market liquidity are being addressed in parallel with the roadmap by the Commission or through the SEM. While issues remain to be resolved at present surrounding the Free Electricity Allowance and pre-payment for domestic customers, these issues are relatively minor and the Commission is confident that these issues will be resolved in the near term.

Decision 9 – The Commission has decided that the domestic market will not be deregulated until there is a commitment in place from ESB which will address, to the satisfaction of the Commission, the rebranding of the ESB supply businesses, including any appropriate transitional arrangements.

5.4 Summary

The Commission has decided that all relevant markets should be considered for deregulation. In terms of the quantitative assessment of competition for the competition review, the Commission has decided to add the rate of switching rate to the indicators proposed in the consultation for the Domestic market. In terms of barriers to entry, expansion and exit, the Commission has determined they are sufficiently low to allow deregulation to be considered in each relevant market. While issues remain to be resolved at present surrounding the Free Electricity

Allowance and pre-payment for domestic customers, the Commission is confident that they will be addressed in the near future.

6.0 Determination of Competitive Markets

6.1 Introduction

Having defined the relevant markets and made an assessment of the barriers to entry, expansion and exit, the Commission has determined that all relevant markets should be considered for deregulation. This section focuses on the quantitative assessment of competition on the relevant markets.

6.2 Criteria for a Competitive Market

In the consultation, the Commission outlined a set of criteria for making a quantitative assessment of the level of competition in each relevant market, setting out certain thresholds to be met in order for deregulation to occur. This section assesses the responses to the proposed thresholds set out and provides a final determination as to what thresholds will be used in the competition review.

6.2.1 Q8 Thresholds

The Commission proposed a number of qualitative criteria which would have to be met in order for a market to qualify for deregulation. These criteria are outlined in Proposal 3. A higher market share for the domestic market was chosen due to the lower propensity to switch supplier in that market. As proposed, qualitative indicators, like incumbent branding, would impact whether the higher or lower end of the market share threshold would be chosen by the Commission.

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 serve 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.

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.

Some respondents questioned the underlying rationale behind the Commission's proposal. The ESRI stated that the use of consumption as a measure of dominance was less accurate than revenue. They pointed out that consumption does not measure the fixed standing charges suppliers utilise in addition to the unit rate. Theoretically, a dominant supplier could impose a higher standing charge on its customers, generating extra revenue, but this would not be reflected in an increased market share by consumption.

Many independent suppliers repeated the importance of wholesale market liquidity in determining retail market dominance especially if vertical integration of ESB is allowed. A number of respondents, who are not direct industry participants, supported the Commission's proposed thresholds. Among industry participants the Commission's proposal produced a varied response with many respondents suggesting alternatives ranging from 55% business and 75% domestic, as suggested by ESB PES, to not allowing any supplier have more than 35% market share, as suggested by VP&E.

Forfás and ISME thought the thresholds set out by the Commission were correct.

Both ESB PES and NIE suggested that the proposed thresholds were unnecessarily high and that regulation would endure longer than is required. Both cited the example of the UK where the market share of the regional incumbent supplier was as high as 83% when deregulation occurred.

Independent suppliers suggested more demanding thresholds than those proposed by the Commission, citing a high HHI figure associated with the CER's dominance thresholds. VP&E proposed three strong players in a relevant market, assigning them a 30/30/30 split in market share with other players gaining the other 10%. They stated that this would reduce the HHI in these markets to below 3,000. A number of independent suppliers also called for BGE to be considered an incumbent in the market due to it sharing a common owner.

Many respondents, not just direct industry participants, questioned the use of a higher threshold in the domestic market. For example, while they felt that the business thresholds were about right, the ESRI disagreed with the Commission's proposed domestic market threshold. They suggested that instead of allowing a higher threshold because domestic customers are less likely to switch, the Commission should instead put measures in place to encourage switching, including measures to reduce search costs associated with changing suppliers.

Chambers Ireland observed that under the criteria, a market share split of 51/40/9 would not meet the criteria. The Competition Authority expressed concern about a scenario where by independent suppliers feel that they will never reach the deregulation thresholds and adopts a strategy of price following instead of innovating to benefit consumers.

Commission's Response

Having reviewed the comments of respondents, the Commission has come to the conclusion that the thresholds proposed for dominance in the business markets are appropriate - given the level of competition which shows significant levels of switching and the existence of countervailing buyer power amongst larger customers.

The rationale for the lower thresholds proposed by NIE and ESB PES does not apply to Ireland. In the UK, the lower allowed threshold for dominance was mitigated by the regional nature of the dominant incumbents in question. Regional incumbent competition does not exist in the Irish market. Therefore, the lower thresholds proposed are not appropriate. Regarding the higher thresholds proposed by independent suppliers, the Commission notes that the maximum HHI the criteria set out by the Commission would allow for is 3,750 (based on market shares of 50%, 25% and 25%). When taken into account with a suitable level of switching, the Commission believes this to be a sufficiently low indicator of market concentration.

Domestic market

With regards to the threshold for domestic customers, the Commission has concluded that a lower threshold (higher market share value) is appropriate. The recent customer survey suggested a considerable degree of “stickiness” of a large proportion of domestic customers, which may mean that there is a proportion of the market that is uncontestable. It found that 56% of domestic customers have not considered switching at this point. While this percentage is expected to drop as independent suppliers build their reputations, this percentage is still likely to be significant in the medium to long term.

Some correspondents have suggested that the appropriate response to this is to not remove price controls until ESB has reached a similar threshold (40-50%) in the domestic market as in the business markets. They pointed out that, with a market share of 60%, ESB could potentially profitably raise prices for those customers who were unlikely to switch and thus abuse any market power it might retain. The Commission acknowledges that this is a possible concern. In deciding whether to deregulate the domestic market at a threshold higher than the business market it has had to weigh-up the potential benefits of deregulation against any costs arising from ESB still possibly having a degree of residual market power. The benefits include possibly lower prices from an unfettered

competitor in the market, and, crucially, more innovation in the types of offers and tariff schemes being made available to customers. Regulatory frameworks, with their focus on trying to accurately measure costs, tend to limit the scope for innovative new products being offered, and indeed recent entry into the domestic market has tended to see entrants offering exactly the same basic product as ESB, with the single difference being a discount on the price.

The potential for consumer harm could be increased in the case of customers in receipt of the Free Electricity Allowance. Although a number of such customers have switched supplier, the rate of switching is lower than the average rate across all domestic customers. This is unsurprising given that customers on this scheme either have their entire bill or a large fraction of their bill paid for by the State, and thus may not be as price-sensitive as the average customer. It would be problematic if any such reluctance to switch led a supplier to increase prices, which would be harmful to the customer concerned and to the State (which is paying much of the cost).

In response to these concerns, the Commission aims to minimise any such risk by undertaking a number of actions to help protect “sticky” customers from harmful actions by suppliers while at the same time allowing all customers the benefits of full competition. These actions include:

- i. The Commission will examine what measures need to be put in place to protect customers, including vulnerable customers in a deregulated market. This will be expanded upon in Question 13.
- ii. Notwithstanding the switching process improvements, the Commission will work with the Department of Social Protection on any alternative options to improve competition for those customers in receipt of the Free Electricity Allowance. This includes examining with the Department the possibility of the Department tendering for one supplier of electricity for these customers. If adopted, such a tender could result in ensuring that such customers were benefiting fully from competitive pressures. Of course, the decision on this issue rests with the Department of Social Protection.

With regard to the 60% threshold, any remaining worries about it being higher than the threshold for business should be mitigated by the requirement that there be a commitment that the ESB brand is divested. This should act to remove any confusion in consumers about the difference between ESB divisions, lower consumer search costs, and generally facilitate greater competition in the market. On this basis the Commission feels that the package of other measures should ensure that consumers gain from this process. Of course, as discussed in Section 7.3.2 below, the Commission will continue to monitor the market and intervene if it feels there is significant consumer harm.

Switching

As was set out in Question 5, the Commission has decided to add switching to the definable measurements for determining whether the Domestic market should be deregulated or not.

Commission's Decision

The Commission has decided that the criteria set out in the consultation for deregulation of a relevant business or domestic market are approximately correct. However, as was laid out in Decision 8, the Commission will add the level of switching to the existing criteria for the determination of a competitive market. The required level of switching is 10% of customers in the relevant market have performed a single switch in the last 12 months.

The Commission would note that, while the purpose of the criteria is to provide clarity going forward for firms and consumers, there may be a possibility of firms trying to manipulate the criteria to control the specific time at which de-regulation occurs. If this does occur, the Commission reserves the right to make decisions re the precise time for de-regulation to occur, and thus the criteria should ultimately be seen as indicative rather than fully binding.

Decision 10 – The Commission has decided that regulatory price controls will be removed when competition is reached in a particular market where all the following criteria have been met; -

- (i) There are at least three suppliers active in the relevant market; and
- (ii) There is a minimum of 2 independent suppliers, each of which has at least 10% share of load (GWh) in the relevant market; and
- (iii) ESB PES and ESBIE combined serves or will serve within a specified period a defined percentage of consumption market share in a relevant market. For each of the Business markets, the percentage market share is 50% or less. In the Domestic market, the percentage market share is 60% or less.
- (iv) There are two additional requirements for the Domestic market. First switching rates must be greater than 10%. Second, ESB must provide the Commission with a satisfactory commitment for the rebranding of ESB supply companies where the commitment is in place prior to the deregulation of the domestic market.

6.3 Market Status Review

In determining whether the relevant markets should be deregulated or not, the Commission proposed in the consultation that it would undertake regular market status reviews. The Commission asked for the views of the respondents as to how these reviews should be constituted. A summary of their responses and the Commission's decisions is outlined below.

6.3.1 Q9 Nature of Review

The Commission made a number of proposals regarding how it would review whether market conditions were eligible for deregulation. The Commission proposed that reviews would take place in March and October each year but that the market would only be deregulated in October of each year so as suppliers would be aware of their regulatory status before taking up hedging positions for the tariff year. The Commission asked whether the review should be prospective or historical in terms of its market share assessment.

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.

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.

Respondents broadly welcomed the Commission's proposal to review the market on a bi-annual basis, starting in March and October 2010 with only one independent supplier stating that a review in March will not give them enough time to plan hedging and risk management strategies for the directed and non-directed contracting rounds in April 2010. Only ESB PES disagreed with the Commission's proposal that deregulation should coincide with the end of the current tariff year.

ESB PES, NIE and the Competition Authority all agreed that a prospective review of the market was appropriate, given the rapidly changing retail market. While domestic customers switch from ESB PES to BGE and Airtricity, a historical

assessment may subject customers to an unnecessarily prolonged transition to open and competitive markets. On the other hand, the independent suppliers favoured a historical assessment, arguing that there was a need to ensure that the recent increases in switching and the decrease in ESB market share are sustainable and that any use of forecasts in such a volatile market was inappropriate. Forfás advocated a mixture of the two options suggesting that the market share analysis should be historical and that the sustainability of competition in the deregulated market should be subject to prospective assessments before deregulation can take place.

A number of independent suppliers stressed that the decision to deregulate was unlikely to be reversed and therefore the Commission should take a more cautious, historical approach to deregulation.

VP&E and Airtricity suggested that ESB PES should be subject to license conditions which would put restrictions in its total market shares. Should the market share threshold be breached ESB would be in breach of their license and could be subject to penalty, or a re-imposition of the price control.

The Competition Authority was against a maximum market share threshold, stating that market share is an indicator of dominance but is not a determinant of it and that competition law is concerned with the abuse of dominance, rather than dominance itself. Therefore, if an incumbent gains a large market share simply by outperforming its competitors it shouldn't necessarily be punished for doing so. On the other hand, a market share trigger scenario does not take into account the possibility of ESB PES abusing what market power it has below any trigger market share.

Commission's Response

With regards to conducting a review of the market, the Commission notes that respondents voiced two distinct risks. There is the uncertainty risk involved with forecasting due to the volatility of the market. On the other hand, the volatility of the market would mean that a historical assessment may be outdated by the time it is conducted as the nature of the market would have changed in the meantime. The Commission is aware of the need to balance these risks in a way that will allow for a timely and accurate review and considers that a forward looking assessment is the most appropriate.

Commission's Decision

Therefore the Commission will conduct competition reviews on the following basis.

The Commission will carry out market reviews on a quarterly basis in March, June, September and December. The number of active suppliers in a given

market will be determined on Meter Registration System Operator (MRSO) data. Supplier market share will be calculated as follows:

- It will be assessed on the latest available consumption data from the MRSO. If the market is found to have passed these and all other criteria then it will be deregulated immediately (subject to all necessary legislative and licensing changes being implemented).
- However, where markets have not met the market share thresholds, a forecast will be calculated for a forward looking assessment. Monthly switching trend data from the MRSO will be used to forecast the most up to date market shares. The average amount of switching over the last three available months of data will be used to extrapolate what the forecast market shares will be in 6 months time.
- The 6 month prospective assessment will serve as a provisional indicator of whether or not deregulation will take place at that time. In order to ensure certainty, a final decision will not be made about the deregulation of the relevant market until 1 month before it is predicted to take place. Similar to the initial assessment, the amount of switching over the previous month will be used to extrapolate what the forecast market shares will be at the proposed time of deregulation. For example, in the June 2010 review, the Commission will use MRSO market share data for Q1 2010 as a baseline. The Commission will then use an average of the switching data from March, April and May to extrapolate what the market shares of the market participants will be at the end of December.

If the June review predicts that the market is likely to have reached its threshold at the end of December 2010, the Commission will publish a final assessment at the end of November which will decide whether the market is to be de-regulated or not. Switching data from October and November will be used to extrapolate what the market shares of the market participants will be at the end of December.

Regarding the average switching rate over the last 12 months, the Commission will draw upon the 12 most recent monthly switching reports submitted by the MRSO.

Decision 11 – The Commission will publish competition reviews on a quarterly basis.

Decision 12 – Supplier market share will be assessed on the latest available consumption data from the MRSO. If the market is found to have passed the criteria set out in Decision 10 then it will be considered deregulated immediately (subject to all necessary legislative and licensing changes being implemented).

However, where markets have not met the market share thresholds, a forecast will be calculated for a forward looking assessment. Monthly switching trend data from the MRSO will be used to forecast the most up to date market shares. The average amount of switching over the last three available months of data will be used to extrapolate what the forecast market shares will be in 6 months time.

The 6 month prospective assessment will serve as a provisional indicator of whether or not deregulation will take place at that time. In order to ensure certainty, a final decision will not be made about the deregulation of the relevant market until 1 month before it is predicted to take place. Similar to the initial assessment, the amount of switching over the previous month will be used to extrapolate what the forecast market shares will be at the proposed time of deregulation.

Decision 13 – The rate of switching will be calculated on a historical basis - the rolling average annual switching rate over the last 12 months.

6.4 Summary

The Commission has decided to use the upper limits of the threshold ranges set out in the consultation for determining whether a relevant market should be deregulated or not. However, in addition to these thresholds, the Commission will review the switching rates part of the assessment for the domestic market. The Commission now requires that each relevant market has a single switching rate of 10% of customers in the previous 12 months.

In terms of the review itself, the Commission has decided that reviews will take place on a quarterly basis and that the assessment will be prospective in nature, forecasting market share of competitors 1 month in advance. However, some of the assessments carried out will be on a historical basis, including the number of competitors in the market and the switching rates.

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

7.1 Introduction

In the consultation, the Commission examined the impact of removing the price controls and looked to address a number of issues related to this. Firstly, the Commission asked how ESB PES business customers be treated in the event that they become eligible for deregulation but domestic customers do not. Secondly, the Commission asked for opinions on how certain regulatory controls, such as the Economic Purchase Obligation and the Universal Service Obligation, should be treated in the event of deregulation occurring. Finally, the Commission asked for responses to the market monitoring arrangements set out in the consultation. This section will summarise and address the responses as well as providing decisions related to the above.

7.2 Removal of Price controls for Business Customers

7.2.1 Q10 Business Customers

The Commission presented three options regarding how the price controls should be removed from ESB in the context of only a portion of the relevant business markets reaching the thresholds. These options are; (i) transfer the deregulated business customers to ESBIE and leave the regulated customers with PES, (ii) allow PES to serve regulated and deregulated customers or (iii) don't allow any deregulation until all markets are ready to be deregulated.

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 deregulated 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.

The options presented by the Commission generated a wide variety of responses. In short, Airtricity and Endesa favoured option (i), BGE and NIE favoured option (ii) and VP&E favoured option (iii) while ESB PES rejected all three proposals.

Airtricity supported option (i) on the condition that ESBIE would be re-branded, otherwise it would support option (iii). Endesa supported option (i) on the condition that ESBIE must continue to offer ex-PES customers PES type tariffs,

such as the PPPT. On the other hand, ESB PES opposed option (i) on the basis that customers cannot be forced to switch supplier, billing and debt management issues, resourcing issues and stranded cost issues.

BGE and NIE supported option (ii) with NIE stating that they themselves were subject to such regulatory conditions and found them to be manageable. However, ESB PES and Airtricity were opposed to accounting separation with ESB PES stating that it would require a more intrusive form of regulation on ESB PES and would, presumably, increase the regulatory burden. VP&E stated that if they had to choose between options (i) and (ii) they would choose (ii) “even though it is flawed and will not work because of the real potential for cross subsidisation.”

VP&E favoured option (iii) on the basis that deregulation on a sector by sector basis is likely to be inefficient and less effective in any case. ESB PES opposed option (iii) on the basis that it discriminates against PES customers that are in markets that are ready for deregulation but cannot reap the benefits because other markets aren't ready.

ESB PES stated that all markets were sufficiently competitive to allow immediate deregulation and therefore the three options presented were unnecessary.

Commission's Response

The Commission notes that there are problems associated with all three of the options presented in the consultation. The only alternative to the three options laid out in the consultation was immediate deregulation. This has already been ruled out by the Commission in this paper as each market must be reviewed on its merits.

The Commission has concluded that Option (ii) is the most appropriate proposal. It allows the removal of price controls from those markets that are effectively competitive without the need for significant transfer of customers and stranding of costs. The Commission already facilitates the oversight of regulated and unregulated customers in BGE. In addition to this incumbents in other jurisdictions possess regulated and unregulated customers, with appropriate accounting separation procedures in place.

The upcoming review of supply costs will cater for separate accounts for the regulated and unregulated business within ESB PES.

Commission's Decision

The Commission has decided to choose Option (ii). This means that ESB PES could hold both regulated and unregulated customers should some or all of the business markets be deregulated while the domestic market stays regulated.

This arrangement will require ESB PES to demonstrate to the Commission's satisfaction that there is no cross subsidisation between regulated and unregulated customers.

Decision 14 – Should some, but not all, of the regulated markets become eligible for deregulation, ESB PES will be required to demonstrate to the Commission's satisfaction that there is no cross subsidisation between regulated and unregulated customers.

7.3 Removal of Price controls for Domestic Customers

7.3.1 Q11 Domestic Customers

In the context of the market being ready for deregulation, the Commission has made a number of proposals regarding the removal of regulatory controls that may not longer be necessary:

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 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 (EPO) from ESB PES.

Other

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

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?

There was broad agreement with the Commission's proposals as respondents recognised that all suppliers should be on a level playing field within the market.

With regards to the removal of price controls and the EPO, only Kore Energy favouring the retention of the EPO on the basis that it protects customers and

does not distort competition. Airtricity and VP&E advocated that, as a state owned company, ESB PES should be required to behave prudently, in the spirit of the EPO. They also stated that there should be no commercial advantage gained by ESB by the credit rating benefit state ownership brings.

Many suppliers suggested that, as part of the review of the SOLR and USO the Commission may need to offer compensation to whatever supplier carries this responsibility in the future. ESB PES offered to support and participate with the Commission in transitioning to such a set of arrangements and to continue to be the SOLR and USO, subject to an arrangement on risk cover and funding.

VP&E asked for detailed consultations on all aspects of Proposal 5.

Commission's Response

With regards to the EPO, the Commission notes the response of Kore Energy. The EPO is a supplementary remedy to the price control to ensure ESB PES purchases its energy in a prudent, economic fashion. The need for an EPO was driven by the lack of competitive pressure on ESB PES driving commercial decision making. Effective competition and the commercial pressures it brings render the EPO unnecessary. Competition will drive ESB PES to behave prudently, in the spirit of the EPO, without the associated regulatory and administrative burden. The SEM Committee has determined that the EPO can cease to apply with the removal of retail price controls. The Committee also decided that the issue of whether the removal of the EPO impacts on the wholesale market, will be separately addressed in a new consultation, the outcome of which may or may not apply at that time, depending on the conclusions of that work.

The Commission notes the support from respondents for a continuation of the SOLR and the USO. With regards to the SOLR, the Commission notes that the SOLR provision must remain in place to protect customers from supplier failure. Therefore, the Commission will consult separately on how the SOLR will continue in a deregulated market. In the meantime, the SOLR provision will remain with ESB PES.

With regards to the USO, the Commission has come to the conclusion that it must be retained. Therefore, the Commission will consult separately on how the USO will continue in a deregulated market. The Commission is minded to impose a licence obligation on suppliers to accept all customers on reasonable terms. A further consultation will provide more detail as to how this will operate. In the meantime, the USO provision will remain with ESB PES.

With regards to the non-discrimination obligation, this obligation is currently a provision in all supply licenses. The obligation only applies where the supplier is judged to be dominant by the Commission. The Commission will consult

separately on how the non-discrimination obligation will continue in a deregulated market. In the meantime, the Commission will propose that the arrangements will remain unchanged.

With regards to the credit rating of ESB PES or any other ESB Group companies, the ownership issue is outside the scope of this paper and the remit of the Commission.

Commission's Decision

As set out in the consultation, the Commission has decided that the price control and the Economic Purchasing Obligation should be removed from ESB PES should the criteria for a competitive market be met. The Commission has decided that the SOLR, USO and Non-discrimination obligation should be subject to further consultation.

Decision 15 – Subject to all the criteria for a competitive market being met in all markets and subject to the necessary legislative changes, the Commission will remove the price control from ESB PES and the obligation of EPO.

Decision 16 - The Commission will consult separately on how the Supplier of Last Resort provision will continue in a deregulated market.

Decision 17 - The Commission will consult separately on how the Universal Service Obligation will continue in a deregulated market.

Decision 18 - The Commission will consult separately on how the Non-discrimination obligation will continue in a deregulated market.

In order to ensure the continuation of active participation in the market, it is important that customers be allowed compare prices across suppliers. In the interest of this, the Commission will also consult on the imposition of a licence requirement on all suppliers to publish tariffs.

Decision 19 - The Commission will consult separately on a licence obligation for all suppliers to publish customer tariffs.

7.3.2 Q12 Market Monitoring

The Commission has stated that effective competition is superior to regulation, but notes that there may be risks involved in removing regulatory controls. Deregulation could see unintended consequences in the medium to longer term such as reduced competition and/or higher prices to some customers groups. Therefore the Commission is proposing to closely monitor market activity for any significant change in market conditions. The Commission sought the views of

respondents as to what remedies the Commission should enforce in this context and what role competition law and the Competition Authority would play in a deregulated market.

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.

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.

Respondents generally supported the proposal to maintain regular monitoring of the ESB in a deregulated market with ESB emphasising that all suppliers should be monitored in the interests of protecting customers from the abuse of market power. The Competition Authority recommended that the market monitoring should remain an essential function of the Commission and observed that the SEM's Market Monitoring unit was a good example of ongoing market supervision even though market power mitigation mechanisms had been implemented and concentration had been substantially reduced.

In relation to the imposition of a price cap, only the IHF responded positively to the proposal, saying that a price cap may have to be implemented “based on best international practise.” The Competition Authority opposed the measure on the basis that it would increase prices in the long run. The Competition Authority pointed out that the retail price is largely determined by the wholesale price in the SEM, which is unregulated. Therefore, suppliers would be exposed to huge risks and this in turn would undermine confidence among investors. BGE stated that if the Commission was satisfied that competition is sufficient to support deregulation, then a price cap won't be necessary as the market will set the price.

Opinion was divided on the effectiveness of competition law in curbing any potential market dominance behaviour associated with a deregulated ESB. Both ESB PES and Endesa felt that, in conjunction with market monitoring, competition law was sufficient to curb any market abuse. However, BGE took the opposite view stating that it was very difficult to prove dominance in newly liberalised markets and that price-based exclusionary abuses are extremely difficult to prove. BGE also noted that to date the Competition Authority had not issued a finding of abuse of dominance.

The Competition Authority observed that if the market is ready for deregulation then the dominance issue will have been addressed. Then, the greatest threat of

dominance, a merger, would be subject to review by the Competition Authority. Should these circumstances change ex-post then competition law can be applied. They state that competition law should not be relied upon in the first instance to address market outcomes that are inherently unpredictable.

Commission's Response

The Commission acknowledges the need for appropriate and regular market monitoring and has decided that it will issue a market monitoring report every six months in order to protect customers and ensure competition remains effective.

Market monitoring reports will review the following

- Number of suppliers
- Market Share (GWhs) for all suppliers
- Switching – total level of switches and switching between independents
- Revenue – revenue earned for all suppliers
- Range of tariffs on offer and average prices paid by customers by tariff.

Regarding the imposition of a price-cap, the Commission agrees with the Competition Authority that the retail price is largely determined by the wholesale price in the SEM. Therefore, suppliers would be exposed to huge risks and this would undermine confidence among investors. The Commission also agrees with BGE's point that where competition is sufficient to support deregulation, then a price cap won't be necessary as the market will set the price. For these reasons, the Commission will not impose a price cap.

The Commission notes the comments of the Competition Authority regarding relying solely on competition law to prescribe remedies to the abuse of dominance on an ex-post basis. It also notes the comments of many respondents regarding the re-imposition of a price control on ESB PES once deregulation has taken place. It is mindful that, while de-regulation should be a positive step for the market and consumers, all the effects cannot be clearly predicted in advance. Should the Commission find that there is anti-competitive behaviour in the market that would be harmful to consumers, and that any voluntary solutions to the problem offered by the relevant supplier(s) are inadequate, the Commission will consider alternative remedies. In particular, given its mandate to ensure that consumers are not exposed to prices above efficient competitive levels, the Commission will consider the re-imposition of price control regulation if necessary.

Commission's Decision

The Commission will publish a market monitoring report every six months reviewing the retail market using a number of quantitative indicators as well as giving a qualitative assessment of competition. Where the report shows that the

market is at risk of anti-competitive behaviour the Commission will consider appropriate remedies, including re-imposition of price controls if appropriate.

Decision 20 – The Commission will issue a market monitoring report every six months. This report will examine:

- Number of suppliers
- Market Share (GWhs) for all suppliers
- Switching
- Revenue
- Range of tariffs on offer and average prices paid by customers by tariff.

Decision 21 – Should the Commission find that the market is in danger of suffering from anti-competitive behaviour and that the voluntary solutions to the problem offered by the relevant supplier(s) are inadequate, the Commission will act to ensure consumers and competition are protected.

7.4 Summary

The Commission has made a number of key decisions as to how the market will be regulated once the price control has been removed. The Commission has decided that PES will serve both regulated and unregulated customers simultaneously, until such time as the market is fully deregulated. It has also decided that should a market be deemed competitive, the price control and Economic Purchase Obligation will fall away, subject to the necessary legislative and licence changes being made.

The Commission will consult further on how the Universal Service Obligation, the Supplier of Last Resort obligation and the Non-discrimination obligation will be treated in a deregulated market. The Commission will also consult on a requirement for all suppliers to publish customer tariffs. Finally, the Commission has decided to issue a market monitoring report every six months. Should the Commission determine that the market is in danger of suffering an abuse of dominance, the Commission may impose remedies in the first instance but will consider the re-imposition of regulated tariffs if that is deemed appropriate.

8.0 Consumer Protection

8.1 Introduction

In the consultation paper, the Commission sought 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. The Commission proposed in the consultation that all suppliers would be required through their license provisions to provide special tariffs to vulnerable customers so as to ensure their protection. This section outlines the response to this proposal, and the Commission's decision following out of this.

8.2 Special Protections

8.2.1 Q13 Tariffs to Vulnerable Customers

The Commission wishes to ensure that vulnerable customers are protected in a deregulated market. The Commission noted that research in Great Britain has suggested that vulnerable customers have not fully benefited from deregulation there. Therefore the Commission has proposed that PES and any other supplier may be required to provide special tariffs to vulnerable and/or other groups of domestic customers:

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.

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 to 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?

There was a general consensus among respondents that any special tariffs for vulnerable customers should not distort the competitive market but this led to differing conclusions as to what the Commission should do to protect vulnerable customers. Respondents suggested a variety of methods through which vulnerable customers could be assisted. In addition to this, MABS proposed a widening of the Commission's current definition of vulnerable customers.

ESB PES and ESBIE supported the Commission's proposal provided any extra license provisions related to special tariffs for vulnerable customers are applied uniformly to all suppliers. Kore also supported special tariffs for vulnerable

customers, stating that all suppliers over a certain size should be required to offer them.

BGE and the IHF all stated that the government should provide assistance to vulnerable customers so as not to distort competition.

The Competition Authority stated that, like BGE and the IHF, the government should directly intervene but also suggested that a subsidy should be offered to vulnerable customers. Endesa and VP&E suggested that such a subsidy could be routed through the Public Service Obligation or through ESB Networks respectively.

MABS stated that any social tariff that provides low cost energy to people on social welfare has merit. Ofgem has a number of tariff initiatives to combat fuel poverty but they are voluntary. This has led to the tariffs having different discounts and eligibility criteria for each supplier.

A number of respondents made observations about how special tariffs should be controlled. The Competition Authority stated that a standard tariff for vulnerable customers would provide a focal point for price coordination between suppliers, and would discourage tariff innovation. On the other hand, MABS stated that the voluntary nature of tariff initiatives in the UK had led to significant variation in the discounts offered, the eligibility criteria, and the approaches taken to the tariffs by suppliers. They noted that as a consequence of this, there have been calls to place regulations upon social tariffs.

Airtricity and NIE both called for greater clarity as to what the Commission was proposing so as to assess any potential impacts in terms of distortions to competition. Airtricity called for a further consultation with regards to this.

The NCA and ESRI both emphasised the importance of market monitoring to ensure captive customers aren't charged more by suppliers. Both also emphasised the importance of encouraging vulnerable customers to become active market participants with the NCA suggesting a publicity campaign to encourage low use and low income customers to switch supplier for a better deal.

Commission's Response

The Commission welcomes the wide variety of responses relating to customer protection and notes that many of the suggestions given are not mutually exclusive. The Commission acknowledges the importance of protecting the most vulnerable customers and has decided that the issue merits further consultation. This consultation will examine general consumer issues including the treatment of vulnerable customers in a deregulated market, specifically:

- The application of the Universal Service Obligation

- Tariff arrangements for vulnerable customers.
- Improving general customer awareness
- Encouraging active market participation across the domestic market
- Improving price transparency.

As was set out in response to Question 12, the Commission will also oblige suppliers to publish their tariffs, helping to ensure that customers are not being overcharged by their suppliers.

Regarding the definition of vulnerable customers, the Commission notes that, under the third package provisions, EU member states are required to define the categories of customer who qualify as vulnerable customers. The Commission is committed to working with the relevant government departments in order to implement all third package provisions, including the vulnerable customer definition.

Commission's Decision

The Commission has decided that the issue of customer protection will be addressed in a separate consultation. This decision reflects the importance the Commission gives to the issue of customer protection.

Decision 22 – The Commission will consult further on customer protection issues, including:

- The application of the Universal Service Obligation
- The application of the Supplier of Last Resort obligation.
- The application of the Non-discrimination obligation.
- Special tariffs for vulnerable customers.
- Improving general customer awareness
- Encouraging active market participation across the domestic market
- Improving price transparency.

8.3 Summary

The Commission received a wide variety of responses to its proposal to oblige all suppliers to offer a special tariff for vulnerable customers. The Commission concluded that the issue of customer protection needed to be examined further and therefore decided to hold a further consultation on customer protection. This consultation will address issues such as the application of the Universal Service Obligation, special tariffs for vulnerable customers, improving general customer awareness, encouraging active market participation for the domestic market and improving price transparency.

9.0 Interim Regulatory Arrangements

9.1 Introduction

In parallel with the Roadmap process, the Commission is progressing work on how the current regulatory framework functions, and how it will continue to function in the interim period until such time as it is appropriate to fully deregulate. In the consultation, the Commission outlined the work programme involved with doing this including Price Control III, Review of K-Factors and Tariff Structures and the retail market Harmonisation Project. The Commission sought the views of stakeholders as to the makeup of the work programme set out in the consultation.

9.2 Regulatory Framework

9.2.1 Q14 Interim Work Programme

In the consultation, the Commission outlined its interim work programme including; Price Control III, Review of K-Factors and Tariff Structures and the retail market Harmonisation Project. Respondents were invited to comment on the work programme:

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.

Responses to this question can be split into two categories. ESB Corporate, ESB PES, ESBIE, Chambers Ireland, the SFA and ISME advocate the immediate removal of the price control, stating that competition has sufficiently developed to allow this to happen. This would remove the need for interim arrangements. Independent suppliers stated that competition was not developed sufficiently enough to allow the removal of the regulatory control. BGE and Airtricity stated there wasn't enough time to put arrangements in place to deregulate of any markets deemed competitive in October 2010.

ESB PES stated that the level of domestic competition had made the Skyplex recommendations on K-factors obsolete. BGE stated that consulting on K-factors separately and ahead of the Roadmap was not helpful for regulatory certainty, In terms of the consultation carried out by Poyry on tariff structures, ESB PES stated that the recommendations failed to demonstrate how they would lead to an increase in competition.

ESB and Endesa both welcomed the Harmonisation Project.

The IHF said that the Commission should reduce electricity prices in the short term to improve competitiveness.

Commission's Response

The Commission notes the comments of all respondents and with regards to the removal of price controls, the Commission's view is that their application is dependent upon whether a particular market segment has met the criteria for deregulation as set out in this paper. Market segments that meet the criteria for deregulation are deemed to be fully competitive and as such the application of price control to those market segments would no longer be appropriate. For those segments where competition has not developed to meet the necessary criteria, as defined by the roadmap, the Commission recognises the need to continue with some form of price control.

The Commission is also conscious of the fact that the form of price control currently in place is no longer relevant to the changed market dynamics. Recognising the shortcomings of the 2006-2010 price control in the context of falling national demand, increased customer switching and the competition issues raised by the annual k-factor adjustment mechanism, the Commission is consulting on the regulatory formula that will apply until such time as all market segments are deregulated. Taking into account all these factors, as well as the relevant aspects of the Skypex report, a proposed decision paper¹¹ on ESB PES's Revenue Regulation Framework was published on the 19th March. In parallel the Commission is, separately, reviewing the internal supply costs that will be allowed to PES as part of the revised formula and a consultation paper is expected to be published in late May or early June.

On the Harmonisation Project, the Commission continues to work closely with industry participants, both in this jurisdiction and in Northern Ireland, to advance the work of the project. The current go-live date for the initial market messages and schema harmonisation is Q2 2012. However, work will continue after that date to further harmonise the markets to the benefit of final customers.

Commission's Decision

As per paper on regulatory formula, the form of regulation will change for those markets where PES continues to be regulated. The approach to regulation will change to an ex-post review, based on a Maximum Allowable Revenue. This will require PES to change its tariffs in line with changing demand, price volatility to ensure that prices remain cost reflective within a stated tolerance band.

Decision 23 – The Commission will continue to progress the interim work programme as set out in the consultation paper.
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¹¹ Draft Decision Paper on ESB PES's Revenue Regulation Framework – CER/10/042

9.3 Summary

The Commission has concluded that in those parts of the market that have not met the criteria for deregulation set out in this paper, there is a need for some form of price control.

Noting the responses given in this paper and previous relevant papers, the Commission has issued a further consultation on ESB PES's Regulation Framework which is currently open. The Commission looks forward to responses to this paper.

10.0 Conclusions

Decision 1 - The Commission will define a Roadmap for the deregulation of ESB PES.

Decision 2 – Retail gas and electricity markets will be reviewed as separate markets.

Decision 3 - For the purposes of this review the retail electricity market will be defined at national boundaries. This definition will be reviewed upon the completion of the Harmonisation Project in 2012.

Decision 4 - The Commission has decided that the electricity retail market will be defined by 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)

Decision 5 - Public lighting will be reviewed as part of the Medium-Sized Business Market.

Decision 6 - All domestic customers are part of the same relevant market.

Decision 7 - The Commission has decided 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, the level of switching in a relevant market, branding, non discriminatory network access and access to wholesale product.

Decision 8 - All relevant markets will be considered for deregulation.

Decision 9 – The Commission has decided that the domestic market will not be deregulated until there is a commitment in place from ESB which will address, to the satisfaction of the Commission, the rebranding of the ESB supply businesses, including any appropriate transitional arrangements.

Decision 10 – The Commission has decided that regulatory price controls will be removed when competition is reached in a particular market where all the following criteria have been met; -

- (i) There are at least three suppliers active in the relevant market; and

- (ii) There is a minimum of 2 independent suppliers, each of which has at least 10% share of load (GWh) in the relevant market; and
- (iii) ESB PES and ESBIE combined serves or will serve within a specified period a defined percentage of consumption market share in a relevant market. For each of the Business markets, the percentage market share is 50% or less. In the Domestic market, the percentage market share is 60% or less.
- (iv) There are two additional requirements for the Domestic market. First switching rates must be greater than 10%. Second, ESB must provide the Commission with a satisfactory commitment for the rebranding of ESB supply companies where the commitment is in place prior to the deregulation of the domestic market.

Decision 11 – The Commission will publish competition reviews on a quarterly basis.

Decision 12 – Supplier market share will be assessed on the latest available consumption data from the MRSO. If the market is found to have passed the criteria set out in Decision 10 then it will be considered deregulated immediately (subject to all necessary legislative and licensing changes being implemented).

However, where markets have not met the market share thresholds, a forecast will be calculated for a forward looking assessment. Monthly switching trend data from the MRSO will be used to forecast the most up to date market shares. The average amount of switching over the last three available months of data will be used to extrapolate what the forecast market shares will be in 6 months time.

The 6 month prospective assessment will serve as a provisional indicator of whether or not deregulation will take place at that time. In order to ensure certainty, a final decision will not be made about the deregulation of the relevant market until 1 month before it is predicted to take place. Similar to the initial assessment, the amount of switching over the previous month will be used to extrapolate what the forecast market shares will be at the proposed time of deregulation.

Decision 13 – The rate of switching will be calculated on a historical basis - the rolling average annual switching rate over the last 12 months.

Decision 14 – Should some, but not all, of the regulated markets become eligible for deregulation, ESB PES will be required to demonstrate to the Commission's satisfaction that there is no cross subsidisation between regulated and unregulated customers.

Decision 15 – Subject to all the criteria for a competitive market being met in all markets and subject to necessary legislative changes, the Commission will remove the price control from ESB PES and the obligation of EPO.

Decision 16 - The Commission will consult separately on how the Supplier of Last Resort provision will continue in a deregulated market.

Decision 17 - The Commission will consult separately on how the Universal Service Obligation will continue in a deregulated market.

Decision 18 - The Commission will consult separately on how the Non-discrimination obligation will continue in a deregulated market.

Decision 19 - The Commission will consult separately on a licence obligation for all suppliers to publish customer tariffs

Decision 20 – The Commission will issue a market monitoring report every six months. This report will examine:

- Number of suppliers
- Market Share (GWhs) for all suppliers
- Switching
- Revenue
- Range of tariffs on offer and average prices paid by customers by tariff.

Decision 21 – Should the Commission find that the market is in danger of suffering from anti-competitive behaviour and that the voluntary solutions to the problem offered by the relevant supplier(s) are inadequate, the Commission will act to ensure consumers and competition is protected.

Decision 22 – The Commission will consult further on customer protection issues, including:

- The application of the Universal Service Obligation
- The application of the Supplier of Last Resort obligation.
- The application of the Non-discrimination obligation.
- Special tariffs for vulnerable customers.
- Improving general customer awareness
- Encouraging active market participation across the domestic market
- Improving price transparency.

Decision 23 – The Commission will continue to progress the interim work programme as set out in the consultation paper.

11.0 Next Steps

11.1 Introduction

There are five major work streams leading out of this paper. These are:

- Implementing the interim regulatory arrangements
 - New Regulatory formula
 - Supply Costs Review
- Publishing the competition reviews.
- Implementing the necessary legal changes to allow deregulation.
 - Changes to SI
 - Licence Changes
- Publishing the customer protection consultation and decision papers.
- Addressing the issue the ESB brand

Each of these identified work streams is assessed below.

11.2 Next Steps

The assessment of the give 5 identified work streams is split into two parts. Firstly, there is a summary of next steps required for implementation and secondly there is a timetable by which these steps must be implemented.

11.2.1 Summary of Next Steps

Implementing the interim regulatory arrangements.

A consultation for the interim work programme is currently open. The work programme for this work stream will be outlined in the decision paper related to the consultation.

Publishing the competition reviews.

As was set out in this paper, quarterly competition reviews will be published each year. The first of these reviews has been published in conjunction with this paper.

Implementing the necessary legal changes to allow deregulation.

The Commission is currently working with DCENR with regards to the necessary legal changes for market deregulation and the implementation of the 3rd package.

Publishing the customer protection consultation and decision papers.

The Commission will publish a consultation paper on customer protection in the summer with the decision paper being published in the autumn. All the necessary customer protection issues will have been addressed in advance of the deregulation of the domestic market.

Addressing the ESB brand.

The Commission will engage with ESB in the coming months regarding the ESB brand. A commitment from ESB will be required prior to deregulation of the domestic market.

11.2.2 Timetable of Implementation

- April 2010: Decision paper and 1st competition review are published.
- June 2010: 2nd competition review published.
- September 2010: 3rd competition review published.
- October 2010: Current tariff year expires. This is the earliest possible time that deregulation will occur. By this stage, the legislative changes and an agreement with the ESB regarding their brand will have to have been made to allow this.
- December 2010: 4th competition review published.

11.3 Summary

The Commission is committed to implementing the above work programme in the interests of facilitating deregulation in a timely and transparent manner. The Commission will keep industry participants informed of this process throughout.