



PROPOSALS ON A ROADMAP FOR DEREGULATION
(CER/09/189)

AIRTRICITY RESPONSE TO
COMMISSION FOR ENERGY REGULATION

FEBRUARY 2010

SSE RENEWABLES/AIRTRICITY

Airtricity is Ireland's No.1 supplier of greener energy offering domestic and commercial customers an electricity supply that is not only low-cost (up to 13% cheaper, percentage discount based on ESB kilowatt hour rates) but that also significantly reduces their carbon footprint. Airtricity now supplies over 150,000 electricity customers in Ireland, making it the third largest energy supplier in the country. At Airtricity, 79% of the company's electricity is from renewable sources ensuring its supply is the greenest in the market.

SSE Renewables is responsible for the development and construction of the Scottish and Southern Energy (SSE) group's renewable energy projects across Ireland, Great Britain, and Continental Europe, including offshore and onshore wind farms, hydro, marine, biomass, and solar projects.

In Ireland, SSE Renewables is the largest renewable energy developer and currently has 19 onshore wind farms in the Republic of Ireland and Northern Ireland generating over 400MW. The company has a total of 694MW of onshore wind farm capacity in Ireland in operation, in construction or with consent, and is actively progressing a significant development pipeline.

SSE Renewables is the leading generator of renewable energy in the UK and Ireland, with over 2,200MW of renewable electricity generation capacity (wind, hydro, and biomass), and a portfolio of over 14,000MW of renewable energy projects in construction, with consent or in development.

INTRODUCTION

Airtricity welcomes the opportunity to comment on the Commission for Energy Regulation's (CER) consultation paper on the "Review of the Regulatory Framework for the Retail Electricity Market – Proposals on a Roadmap for Deregulation"

It has always been our belief that effective competition is the best mechanism for bringing benefits to energy consumers. This competition will hopefully bring with it improved product innovation, improved choice, improved quality and effective competitive consumer pricing.

While this competitive market is developing we believe that the aim of regulation is to correct for instances of market failure. Once competition is deemed to be well established in a market we envisage that the role of a regulator should move from that of revenue and tariff setting to one of conduct regulation and compliance monitoring within the market.

It is essential that both suppliers and customers have a clear understanding of how this transition will be managed, and we welcome this consultation as a first step in this process. It is also imperative that regulatory controls are not removed prematurely, as to do so could severely damage if not destroy the competition that has already started to develop.

It is with this in mind that we have reviewed the consultation paper and request that the CER take the following comments/response into account before making a final decision on the future of the price regulation in the Irish electricity retail market.

GENERAL COMMENTS

It is imperative that the transition from a market with regulated prices to one without is handled with extreme care. If the process is rushed it will most likely undermine the early stage competition that has begun to develop. We welcome this consultation on the CER's initial thoughts on this process and see it as a welcome first step on the path to a fully competitive retail electricity market.

In previous responses we have highlighted our belief that the CER should lay out a clear vision of what the competitive market, which is starting to develop, will look like and what regulatory structures need to be put in place to support it.

While we believe that this current consultation goes some way to addressing these issues we believe that there are further issues that need to be explored before a final decision on the deregulation of retail tariffs in the electricity market can be reached.

We have broken our response into three parts, the first deals with the issues we feel need to be addressed before the deregulation process can begin, the second part of our response deals with our views on the criteria as set out within the consultation document, and the final part of our response, the appendix, deals with the specific questions raised by the CER within the consultation.

PRE – REQUISITES TO DEREGULATION

There are a number of current issues within the Irish Electricity market, which we believe the CER must address before the process of deregulation can begin.

In particular we believe that the issues of **global aggregation, wholesale market liquidity, market systems, branding, and the future role of the regulator** need to be addressed before a final decision on the future of price regulation can be made.

We also believe that the CER needs to give further consideration to the issue of the reintegration of the power generation and supply sides of the ESB group. While we accept that this significant change may be considered an issue that is best dealt with by the SEM committee, we believe it is an issue that must be fully resolved before deregulation can take place.

It is our opinion that the following issues must be addressed before any deregulation of the electricity market.

- **Re-branding of ESB supply businesses** – The issues of branding in relation to the ESB supply business must not be underestimated. It is well established that from a consumer perspective, within the Irish electricity market, that the ESB brand is a household name and as stated in the consultation is synonymous with the supply, generation and transportation of electricity. For most consumers there is little understanding of the separation, which has already taken place, of the constituent parts of the ESB group and the different brands associated with each.

The 3rd Package is clear that brand separation is a requirement for vertically integrated distribution system operators and the supply branch of such undertakings. This has particular resonance in the Irish market where the vertically integrated undertaking is also state owned and as such there is a perception among consumers that the undertaking is actually state sanctioned in its offerings. **We therefore see that the rebranding of both the ESB supply businesses, ESB CS and ESB IE is a prerequisite for deregulation.**

To be clear it would not be acceptable for the ESB name or logo to be used in any way in this rebranding, we believe that when ESB IE was established it was inappropriate that they were allowed use the ESB name and brand.

- **Global aggregation** - In the retail market, the issue of cross-subsidy can only be solved if all suppliers have to compete on the basis of the same market structures; allowing suppliers to compete on an equal footing. This means that the ESB PES business should be included in the Settlement process in the same way as other Suppliers; **the move to global aggregation is therefore essential before deregulation can take place.**
- **Wholesale Market Liquidity** – Limited opportunities for hedging in the Single Electricity Market mean that energy costs are largely inappropriately fixed at one point in the year, at the fuel prices prevailing at that time.

Our thoughts on this are well documented in our previous responses, and we are happy to discuss these in detail with the CER.

Suppliers aim to stabilise the cost of wholesale energy through hedging, but available contracts last only up to 12 months and must be bought over a short period four to five months prior to the start of the tariff year. Contracts on offer are insufficient to enable all suppliers to be fully hedged. This drives up the cost of hedging, but still leaves significant exposure to Pool prices. To avoid cliff-edge tariff price changes and unexpected mid-year changes, as has happened over the past year, the CER needs to address the quantity and duration of hedging contracts available in the market.

As the contracting period lasts only a short while, it does not offer much opportunity to take advantage of dips in fuel prices to build a robust hedging contract portfolio. For example the 2008/9 tariff hedging period during 2008 coincided with rapidly increasing world fuel prices which resulted in suppliers having to lock in at prices that in retrospect were well out of the money.

Currently there is no functioning secondary market to enable participants to refine their hedge position. Lack of such a market increases risk and cost to suppliers, which must inevitably feed through to customer prices.

As was seen over the last year, the lack of opportunity for suppliers and in particular the PES to build a robust hedging contract portfolio can result in the requirement for dramatic and numerous changes to customer tariffs throughout the year.

More liquidity, variety of duration, and also volume available in the hedging market, would provide suppliers with more opportunities to accumulate and trade directed contracts during a year, thus ensuring that suppliers are able to buy hedging contracts at timely intervals and market reflective prices throughout the entire year.

Therefore as a prerequisite to deregulation we believe that the CER must address these market failures by;

- Continuing to support the development of secondary market arrangements that align with the GB market and support inter-market trading
 - Working with industry to improve liquidity and volume availability in the wholesale contract market.
 - Developing standard contracts of varying durations, which would be available throughout the year.
 - Putting in place arrangements to enable PSO generators to trade directly, without losing their PSO support.
- **Role of the Regulator** – We believe it is imperative there is a clear understanding of the role and responsibilities that the regulator will take once the market has been deregulated. It is essential that market participants, in particular consumers, have an understanding of the structures and regulations that will be in place in this deregulated market. As the current consultation does not go into enough detail on this, we would ask that CER clearly lay out what roles they see the regulator carrying out in this new market and also the structures that will be required to support these roles.
 - **Retail Market Failures** - A number of structural failures of the retail market require remedy before deregulation can take place, for example current market structures inhibit all suppliers from offering tariffs to micro generators.

We also believe that prepayment metering needs to be addressed, the current systems/market structures limit independent suppliers from accessing this segment of the market in a fair and transparent manner, it is essential that suppliers are competing on level playing field in all market segments before deregulation can be considered.

The current market processes also prohibit recipients of the free electricity allowance from switching suppliers while retaining the credits they have built up. It is our belief that the above market failures/barriers to entry must be

addressed satisfactorily by the CER before any level of deregulation may occur.

CRITERIA FOR DEREGULATION

We agree with the CER proposal to review the market share of ESB CS and ESB IE in a combined manner. Throughout our response where we refer to the incumbent supplier or ESB, we are referring to ESB CS and ESB IE in a combined manner.

Once the above prerequisites have been achieved we believe the following are the appropriate criteria for the CER to apply in assessing the level of competition within the relevant market segments:

- **At a minimum, independent suppliers, and by this we mean suppliers that are not in the ownership of the same shareholder, must have a market share not less than 30%.**
- **There must be at least 3 suppliers, two of which must be independent, again not in the ownership of the same shareholder, operating within the market before deregulation could be considered.**
- **The incumbent suppliers market share must be less than 40%**

In our opinion not enough weighting is given to the more qualitative market issues when considering the criteria under which to assess the level of competition in the relevant markets, and as such we believe that the above prerequisites are essential before deregulation can take place.

MARKET SHARE THRESHOLDS

It is our belief that the market share thresholds provided in the consultation are on the low side and are likely to raise concerns as to whether ESB are still dominant in the relevant markets.

Taking into consideration factors such as the overall size of the ESB, the vertically integrated nature of ESB, the privileged access to capital that is afforded to the ESB group, and its state ownership, the market share targets need to be more aggressive. Our proposal is that the following market share thresholds should apply:

- **SME – 35 – 40%**

- LEU – 35 – 40%
- Domestic – 40 – 50%

This is in line with the ERGEG guidelines which suggest that any market share higher than this is likely to lead to issues of dominance.

HERFINDAHL-HIRSCHMAN INDEX

We are disappointed with the weighting given to the importance of the Herfindahl-Hirschman Index (HHI) as a measure of market concentration.

It is widely accepted that a level of 1,800 is considered acceptable when assessing the level of concentration within a market, and that any score above this is likely to raise issues of dominance.

In the consultation it is stated that the scale of the Irish market is insufficient to support the necessary amount of supply business to reach the desired target.

While we acknowledge the scale of the Irish market makes it extremely difficult to reach the desired target of 1,800 we do not believe that the CER should dismiss its relevance.

We find this dismissal of the HHI score due to market size particularly confusing when the HHI measure is a key part of the assessing dominance in the SEM as part of the market power mitigation strategy.

We believe that rather than dismiss the HHI as a measure of market concentration the CER should try and address the issues that are preventing us from reaching a more acceptable level.

It is obvious that in the domestic market in particular there is still plenty to do with a HHI score that is currently over 7,000.

TIMELINES

It is our belief that it would be inappropriate for the CER to use forecasts when carrying out its assessment of competition in a relevant market sector. As competition is developing we are likely to see significant shifts in market shares, and as such we believe forecasts would at best be uncertain and we would strongly recommend that the CER use historical assessment as the means to measure the level of competition. To do otherwise could result in the

premature removal of price regulation in the retail market, with potentially disastrous results accruing for customers.

RELEVANT MARKETS

We are in agreement with the CERs proposal to define 4 relevant markets for the supply of retail electricity. As stated in the consultation while there is considerable overlap between these markets. The supply and demand economics of the relevant markets would imply that they should indeed be considered four relevant markets for the supply of retail electricity.

The proposed breakdown also reflects the breakdown that is currently used by most suppliers when defining product offerings for potential customers and as such will be relatively simple for customers to understand.

SWITCHING RATES

We do not believe that market share metrics should be used as the sole measure to assess whether a market is fully competitive. The CER should also look at the switching rates within the relevant markets. It is well established that multiple switching from customers within a market segment is indicative of a market where there are few barriers to customers wishing to switch supplier. It is vitally important that in a market where customer switching is a relatively new phenomenon that the market is allowed settle down and a clear picture of the long term switching trends allowed develop before any decision on the level of switching is made.

It is only when all of these criteria have been achieved and the prerequisites have also been met that the CER should move on to the next stage, the market with no end user price regulation.

TRANSITION TO DEREGULATION

We believe that the removal of end user price regulation should only be contemplated in any of the relevant markets once:

- the pre-requisites highlighted above are met;
- the number of independent suppliers active in the market have reached the required levels;
- both the independent suppliers and the incumbent have reached the required market share thresholds. As stated

previously we believe that this must be on an historic basis rather than based on at best subjective and most likely inaccurate forecasts;

We do not believe that these criteria are met for any of the relevant markets at this time.

CUSTOMER COMMUNICATION

It is imperative that as part of this transition to a fully competitive market that the regulator carries out an information campaign for customers, in particular domestic and small SME customers. This campaign should make consumers aware of the potential suppliers in the market and how to contact them; it should also provide customers with details of their rights within the market and the role the regulator in this new market.

REVIEW TIMELINES

We think it is appropriate, particularly in the current market environment where switching levels are at an all time high, for the CER to carry out its review of competition twice a year.

However as we stated above we believe that the CER must use actual historic data when carrying out this review, as to use forecast could result in the premature removal of price regulation in the retail market, with potentially disastrous results accruing for customers.

REGULATORY SAFEGUARDS

If price regulation was to cease in any particular market we would find it hard to see how the regulator could step back in and reregulate prices. This is one of the reasons that we believe it is best to deregulate the market segments one at a time rather than in one big bang, as it would enable the CER to assess how the deregulation process was working on one market segment at a time, and rectify any issue before the deregulation of the next.

We therefore also believe that it would be appropriate for the CER to enshrine the maximum market share as decided upon as a licence condition. This would ensure that the ESB supply businesses would be incentivised not to breach this target, as they would then be in breach of their licence.

INTERIM REGULATORY ARRANGEMENTS

We do not believe that accounting separation will work as a mechanism for dealing with the issues of the relevant business markets reaching the threshold for the removal of price regulation according to different timescales

It is our understanding that ESB IE, unlike ESB Customer Supply, is treated the same as other independent suppliers by the market systems, and as such we believe that the migration of the deregulated customers to this new supply company would ensure that all suppliers in the market are treated equally.

However this would only work if ESB IE had been rebranded as suggested above, specifically without reference to the ESB name or brand. If this was not the case or it was found that their access to the market systems/processes was not on similar terms to those of the other independent supply businesses we would see no other option but the option 3 that is proposed in the paper. That is that all businesses customers would stay on regulated tariffs until such a time as all business markets reached the required thresholds and met the necessary criteria.

We therefore believe that as the relevant markets become deregulated these customers should be migrated over to the rebranded ESB IE supply business.

MARKET DATA

As a virtue of the dominant monopoly position of the ESB in the Irish Electricity market they have had access to large volumes of historical customer related market data and information, such as historic consumption data, which independent suppliers have not.

This information provides an unfair competitive advantage to ESB CS and we believe it should be shared with all market participants as part of the deregulation process.

K- FACTORS AND TARIFF STRUCTURES

It is unlikely that all of the above prerequisites and criteria will be met this year and as such we welcome the CER's commitment to progressing both the K-Factor and Tariff Structures reviews, while the process of deregulation is under review.

There were numerous issues identified in both of these consultations that need to be addressed, e.g. global aggregation, transparency of

energy costs, the disaggregation of network costs, and costs allocation and cost reflectivity issues and also how k –factors will be treated in a competitive environment.

If the majority of these issues are addressed they will go a long way to resolving the issues we highlighted as being prerequisites to deregulation. As we believe that the necessary criteria for deregulation are unlikely to be met in 2010 it is essential that the CER continue to progress these issues at this time.

CONCLUSION

Airtricity welcomes this consultation from the CER as a first step in the process of removing regulated end user prices in the retail electricity market.

However as stated above we believe that the removal of end user price regulation should only be contemplated in the relevant markets once:

- the pre-requisites highlighted in our response are met;
- the number of independent suppliers active in the market have reached the required levels;
- both the independent suppliers and the incumbent have reached the required market share thresholds. As stated previously we believe that this must be on an historic basis rather than based on subjective and potentially inaccurate forecasts;

We do not believe that these criteria are met for any of the relevant markets at this time, and we believe that it is unlikely that they will be met in 2010. We would therefore encourage the CER to continue to work with the issues raised within the recent consultations on the review of K- Factors and tariff structures. This will ensure that the competitive markets that are now developing will continue to go from strength to strength and will also go some way to addressing the concerns/issues we have raised above.

Given the very complex nature of the issues raised within this consultation it would be very beneficial for the CER to host an industry forum with all the relevant stakeholders in attendance to discuss the issues and we are happy to work with the CER in this regard.

APPENDIX – PROPOSALS/QUESTIONS

PROPOSAL 1

RESPONDENTS ARE INVITED TO COMMENT ON THE PROPOSAL IN SECTION 4.5 TO REVIEW THE MARKET AND DEFINE A ROADMAP FOR DEREGULATION OF THE RETAIL ELECTRICITY MARKET. ARE YOU IN FAVOUR OF THE PROPOSAL? DO YOU THINK THIS IS THE RIGHT TIME? OUTLINE REASONS FOR AGREEMENT OR DISAGREEMENT.

QUESTION 1 – ARE YOU IN FAVOUR OF THE PROPOSALS OUTLINED IN SECTION 3.4, TO REVIEW THE MARKET AND DEFINE A ROADMAP FOR DEREGULATION OF THE RETAIL ELECTRICITY MARKET? DO YOU THINK THIS IS THE RIGHT TIME? OUTLINE REASONS FOR AGREEMENT OR DISAGREEMENT.

We are supportive of the CER proposal to define a roadmap for the deregulation of the retail electricity market. In developing this roadmap we believe it is essential that the CER sets out clearly how it views this developing competitive market and the structures that will be required to support it.

As stated in the main body of our response we believe that there are certain issues which must be addressed before the actual process of deregulation may begin, namely more liquidity in the wholesale market, the implementation and impact of global aggregation, branding separation and the role that the regulator will play in this deregulated market. We believe that these issues are essential prerequisites to any form of deregulation.

QUESTION 2 – IN RELATION TO PROPOSAL 1, SECTION 4.5, RESPONDENTS ARE INVITED TO COMMENT ON THE PROPOSAL TO DEFINE 4 RELEVANT MARKETS FOR THE SUPPLY OF RETAIL ELECTRICITY. ARE YOU IN FAVOUR OF THE PROPOSAL? OUTLINE REASONS FOR AGREEMENT OR DISAGREEMENT.

We are in agreement with the CERs proposal to define 4 relevant markets for the supply of retail electricity. As stated in the consultation while there is considerable overlap between these markets the supply and demand economics of the relevant markets would imply that they should indeed be considered to be four relevant markets for the supply of retail electricity.

The proposed breakdown also reflects the breakdown that is currently used by most suppliers when defining product offerings for potential customers and as such will be relatively simple for customers to understand.

While we accept that there may be some efficiency if the market was to be deregulated with a big bang approach, we believe that it is far more sensible to deregulate each market as it deemed fully competitive.

QUESTION 3 – IN RELATION TO PROPOSAL 1, SECTION 4.5, RESPONDENTS ARE INVITED TO COMMENT ON WHETHER PUBLIC LIGHTING SHOULD BE CONSIDERED AS A RELEVANT MARKET. HOW SHOULD IT BE TREATED IN A DEREGULATED ENVIRONMENT? OUTLINE REASONS FOR AGREEMENT OR DISAGREEMENT.

As there is currently little competition within the public lighting and unmetered supply markets we agree that these should not be considered as relevant markets for deregulation at this stage. However we believe that the CER should continue to work on removing the barriers which are stopping competition from developing in these markets.

QUESTION 4 – IN RELATION TO PROPOSAL 1, SECTION 4.5, RESPONDENTS ARE INVITED TO COMMENT ON THE PROPOSAL TO CONSIDER ALL DOMESTIC CUSTOMERS PART OF THE SAME RETAIL MARKET. ARE YOU IN FAVOUR OF THE PROPOSAL? OUTLINE REASONS FOR AGREEMENT OR DISAGREEMENT.

We agree with the proposal that all domestic customers are considered part of the same retail market.

PROPOSAL 2

THE COMMISSION IS PROPOSING IN SECTION 5.2 THAT IN ASSESSING THE LEVEL OF COMPETITION IN THE RETAIL MARKET THE FOLLOWING FACTORS SHOULD BE CONSIDERED;

- **THE NUMBER OF SUPPLIERS ACTIVE IN A PARTICULAR MARKET**
- **INDIVIDUAL MARKET SHARES OF THE INCUMBENT (AND ITS AFFILIATES) AND INDEPENDENT SUPPLIERS**
- **BARRIERS TO ENTRY, EXPANSION AND EXIT INCLUDING: SUNK COSTS, SWITCHING SYSTEMS AND**

**PROCESSES, BRANDING, NON DISCRIMINATORY
NETWORK ACCESS AND ACCESS TO WHOLESALE
PRODUCT**

QUESTION 5 – RESPONDENTS ARE INVITED TO COMMENT ON THE PROPOSAL TO ASSESS THE LEVEL OF RETAIL COMPETITION USING THE FACTORS OUTLINED IN PROPOSAL 2, SECTION 5.2. ARE YOU IN FAVOUR OF THE PROPOSAL? OUTLINE REASONS FOR AGREEMENT OR DISAGREEMENT.

We do not believe that market share metrics should be used as the sole measure to assess whether a market is fully competitive. In our opinion the CER should also look at the switching rates within the relevant markets. It is well established that multiple switching from customers within a market segment is indicative of a market where there are few barriers to customers wishing to switch supplier. It is vitally important that in a market where customer switching is a relatively new phenomenon that the market is allowed settle down and a clear picture of the long term switching trends allowed develop before any decision on the level of switching is made.

In our opinion not enough weighting is given to the more qualitative aspects when considering the criteria under which to assess the level of competition in the relevant markets. The issues of branding in relation to the ESB supply business must not be underestimated. It is well established that from a consumer perspective, within the Irish electricity market, the ESB brand is a household name and as stated in the consultation is synonymous with the supply, generation and transportation of electricity. For most consumers there is little understanding of the separation, which has already taken place, of the constituent parts of the ESB group and the different brands associated with each.

The 3rd Package is clear that brand separation is a requirement for vertically integrated distribution system operators and the supply branch of such undertakings. This has particular resonance in the Irish market where the vertically integrated undertaking is also state owned and as such there is a perception among consumers that the undertaking is actually state sanctioned in its offerings. We therefore see that the rebranding of the ESB supply businesses is a prerequisite for deregulation.

QUESTION 6 – FOR EACH OF RELEVANT MARKETS DISCUSSED IN SECTION 5.3, 5.4 AND 5.5, RESPONDENTS ARE ASKED TO CONSIDER IF THERE IS SUFFICIENT ACTIVITY TO CONSIDER THE REMOVAL THE REGULATORY CONTROLS IN THAT MARKET. OUTLINE REASONS FOR AGREEMENT OR DISAGREEMENT.

As we have highlighted in our response that we believe the removal of end user price regulation should only be contemplated in any of the relevant markets once:

- the pre-requisites highlighted in our response are met;
- the number of independent suppliers active in the market have reached the required levels;
- both the independent suppliers and the incumbent have reached the required market share thresholds. As stated previously we believe that this must be on an historic basis rather than based on subjective and potentially inaccurate forecasts;

We do not believe that these criteria are met for any of the relevant markets at this time.

We are also disappointed with the weighting give to the importance of the Herfindahl-Hirschman Index (HHI) as a measure of market concentration. It is widely accepted that a level of 1,800 is considered acceptable when assessing the level of concentration within a market. In the consultation the HHI results are given little relevance as it is stated that the scale of the Irish market is insufficient to support the necessary amount of supply business to reach the desired target.

While we acknowledge the scale of the Irish market makes it extremely difficult to reach the desired target of 1,800 we do not believe that the CER should dismiss its relevance. We find this dismissal of the HHI score due to market size particularly confusing when the HHI measure is a key part of the assessing dominance in the SEM as part of the market power mitigation strategy. Instead we believe that the CER should try and work to achieve as low HHI score as possible. It is obvious that in the domestic market in particular there is still plenty to do with a HHI score that is currently over 7,000.

QUESTION 7 – RESPONDENTS ARE INVITED TO COMMENT ON THE ASSESSMENT OF THE BARRIERS TO ENTRY, EXIT AND EXPANSION

WITHIN THE RETAIL ELECTRICITY MARKET OUTLINED IN SECTION 6. DO YOU AGREE OR DISAGREE WITH THE PRELIMINARILY CONCLUSIONS? ARE THERE OTHER ISSUES WHICH HAVE NOT BEEN DISCUSSED WHICH WOULD PREVENT OR UNDERMINE THE DEVELOPMENT OF A COMPETITIVE MARKET? OUTLINE ANY SUGGESTIONS TO IMPROVE THE SITUATION FOR EXISTING SUPPLIERS AND NEW ENTRANTS.

We do not believe that this assessment captures all the barriers to entry, exit and expansion within the retail electricity market. As we have discussed above in our response we believe that the issues of global aggregation, wholesale market liquidity and the rebranding of the ESB supply businesses are vitally important in the deregulation process and we do not agree with the CERs assessment that the current market structures and process are addressing these barriers. For example the issue of the transfer of DFSA allowances is highlighted in the paper, this issue is still unresolved and it is not likely to be so in the near future. There is also the issue of micro generation where independent suppliers are unable to offer tariffs to these types of customers due to the current market structures, again with no resolution apparent in the short term. As we have previously stated all of these issues need to be addressed as a prerequisite to the consideration of deregulation.

The 3rd Package is clear that brand separation is a requirement for vertically integrated distribution system operators and the supply branch of such undertakings. This has particular resonance in the Irish market where the vertically integrated undertaking is also state owned and as such there is a perception among consumers that the undertaking is actually state sanctioned in its offerings. We therefore see that the rebranding of the ESB supply businesses is a prerequisite for deregulation.

PROPOSAL 3

THE COMMISSION IS PROPOSING IN SECTION 7.2 THAT REGULATORY PRICE CONTROLS SHOULD BE REMOVED WHEN COMPETITION IS REACHED IN A PARTICULAR MARKET WHERE 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, THAT AT LEAST TWO OF THE INDEPENDENT**

SUPPLIERS IN A PARTICULAR MARKET HAS AT LEAST 10% SHARE OF LOAD (GWH) IN THE RELEVANT MARKET, AND

- (iii) ESB PES AND ESBIE COMBINED SERVES OR WILL WITHIN A DEFINED PERIOD 40-50% GWH IN THE LEU MARKET, 40-50% GWH IN MEDIUM-SIZED BUSINESS MARKET, 40-50% GWH IN THE SMALL BUSINESS MARKET AND 55-60% GWH IN THE DOMESTIC MARKET**

QUESTION 8 - IN RELATION TO PROPOSAL 3, SECTION 7.2, RESPONDENTS ARE INVITED TO COMMENT ON THE PROPOSAL FOR THE THRESHOLDS FOR THE REMOVAL OF REGULATORY CONTROLS IN THE RELEVANT RETAIL MARKETS FOR ELECTRICITY. ARE YOU IN FAVOUR OF THE PROPOSAL? OUTLINE REASONS FOR AGREEMENT OR DISAGREEMENT.

It is our belief that the market share thresholds provided in the consultation are on the low side and are likely to raise concerns as to whether ESB are still dominant in the relevant markets.

When taking into consideration factors such as the overall size of the ESB, the vertically integrated nature of ESB, the privileged access to capital that is afforded to the ESB group, and its state ownership, the market share targets need to be more aggressive. We suggest that the following market share thresholds should apply:

- SME – 35 – 40%
- LEU – 35 – 40%
- Domestic – 40 – 50%

This is in line with the ERGEG guidelines which would suggest that any market share higher than this is likely to lead to issues of dominance.

As discussed above once the prerequisites we have highlighted have been achieved we believe the following are the appropriate criteria for the CER to apply in assessing the level of competition within the relevant market segments:

- It is our belief that at a minimum independent suppliers, and by this we mean ones that are not in the ownership of the same shareholder, must have a market share not less than 30%.

- We also believe that there must be at least 3 suppliers, two of which must be independent, again not in the ownership of the same shareholder, operating within the market before deregulation could be considered.
- We believe that the incumbent suppliers market share must be less than 40% in the relevant market

PROPOSAL 4

THE COMMISSION IS PROPOSING IN SECTION 7.4 TO REVIEW CONDITIONS IN EACH MARKET ON A BI-ANNUAL BASIS STARTING IN MARCH AND OCTOBER 2010 INCLUDING AN ASSESSMENT OF EACH SUPPLIER'S MARKET SHARE. THE REVIEW WILL TAKE ACCOUNT OF THE FOLLOWING:-

- (i) THE EXPECTED MARKET SHARE OF ESB (PES AND ESBIE TOGETHER). THIS WILL BE BASED ON ACTUAL MARKET INFORMATION FROM MRSO AND CER FORECASTS.**
- (ii) THE EXPECTED MARKET SHARE OF EVERY OTHER SUPPLIER. THIS WILL BE BASED ON ACTUAL MARKET INFORMATION FROM MRSO AND CER FORECASTS**

QUESTION 9 – RESPONDENTS ARE INVITED TO COMMENT ON THE OPTIONS FOR THE REVIEW OF MARKET CONDITIONS IN MARCH AND OCTOBER OUTLINED IN SECTION 7.3. ARE YOU IN FAVOUR OF PROPOSAL 4? SHOULD THE REVIEWS BE HISTORICAL OR PROSPECTIVE? WHAT ACTIONS DO YOU THINK THE COMMISSION SHOULD TAKE IF COMPETITION TESTS FAIL IN SUBSEQUENT MARKET REVIEWS? OUTLINE REASONS FOR AGREEMENT OR DISAGREEMENT.

We agree with the CER's proposal to carry out its review of competition on a bi-annual basis in March and October, particularly in the current market environment where switching levels are at an all time high. However it is our belief that it would be inappropriate for the CER to use forecasts when carrying out its assessment of competition in a relevant market sector. As competition is developing we are likely to see significant shifts in market shares, and as such we believe forecasts would at best be uncertain and we strongly recommend that the CER use historical assessment as the means to

measure the level of competition. To do otherwise could result in the premature removal of price regulation in the retail market, with potentially disastrous results accruing for customers.

If price regulation was to cease in any particular market we would find it hard to see how the regulator could step back in and reregulate prices. This is one of the reasons that we believe it is best to deregulate the market segments one at a time rather than in one big bang, as it would enable the CER to assess how the deregulation process was working on one market segment at a time, and rectify any issue before the deregulation of the next.

We therefore also believe that it would be appropriate for the CER to enshrine the maximum market share as decided upon as a licence condition. This would ensure that the ESB supply businesses would be incentivised not to breach this target, as they would then be in breach of their licence.

PROPOSAL 5

THE COMMISSION IS PROPOSING IN SECTION 8.3 THAT FURTHER TO ALL THE CRITERIA FOR A COMPETITIVE MARKET BEING MET IN ALL MARKETS AND SUBJECT TO THE DCENR MAKING ALL NECESSARY LEGISLATIVE CHANGES, THE COMMISSION WILL ALSO TAKE STEPS TO CHANGE THE FORM OF REGULATION TO REFLECT THE FOLLOWING PRINCIPLES:

PRICE CONTROLS

- **REMOVAL OF ALL PRICE CONTROLS ON ESB PES**
- **THE REMOVAL OF ANY ESB PES ECONOMIC PURCHASE OBLIGATION FROM ESB PES.**

OTHER

- **REVIEW OF THE OBLIGATION OF NON – DISCRIMINATION**
- **REVIEW OF THE DESIGNATION OF ESB PES AS THE SUPPLIER OF LAST RESORT AND THE UNIVERSAL SERVICE OBLIGATION.**

QUESTION 10 – RESPONDENTS ARE INVITED TO COMMENT ON THE OPTIONS OUTLINED IN SECTION 8.2 FOR HOW THE PRICE CONTROLS SHOULD BE REMOVED IN THE CONTEXT OF ONLY A PORTION OF THE RELEVANT BUSINESS MARKETS REACHING THE THRESHOLD FOR THE REMOVAL OF THE PRICE CONTROL. SHOULD THE DE-REGULATED CUSTOMERS BE TRANSFERRED TO ESBIE? SHOULD ESB PES BE ALLOWED TO SERVE REGULATED AND

UNREGULATED CUSTOMERS OR SHOULD THE PRICE CONTROL REMAIN IN PLACE UNTIL ALL MARKETS HAVE REACHED THEIR THRESHOLDS? IS THERE ANOTHER COURSE OF ACTION THAT YOU WOULD BE IN FAVOUR OF? OUTLINE REASONS FOR AGREEMENT OR DISAGREEMENT.

As we have highlighted above we do not believe that accounting separation will work as a mechanism for dealing with the issues of the relevant business markets reaching the threshold for the removal of price regulation according to different timelines.

It is our belief that as the relevant markets become deregulated these customers should be migrated over to the ESBIE supply business, a prerequisite to this as we state above would be that the ESBIE supply business would be rebranded and would no longer share the ESB brand.

It is our understanding that ESBIE, unlike ESB Customer Supply, is treated the same as other independent suppliers by the market systems, and as such we believe that the migration of the deregulated customers to this new supply company would ensure that all suppliers in the market are treated equally.

However if ESBIE was not to be rebranded as suggested or it was found that their access to the market was not on similar terms to those of the other independent supply businesses we would see no other option but the option 3 that is proposed in the paper whereby all businesses customers would stay on regulated tariffs until such a time as all business markets reached the required thresholds and met the necessary criteria.

QUESTION 11 – 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?

We believe that it is essential that in a deregulated market that all suppliers are treated equally and therefore we would agree with the proposal that once all criteria for a competitive market are met in all the markets that ESB PES should have its price controls removed.

However the supply businesses are still state owned entities and we believe that they should still be directed to act in a prudent manner, we would also ask that the CER ensure that any benefit in terms of credit rating due to their state ownership is not used in an anti competitive manner.

In relation to the issues of the obligation of Non – Discrimination, Universal Service Obligation and the designation of the ESB PES as the supplier of last resort it is important that no discrimination occurs among companies as to their rights and obligations.

It is important that a level playing field is maintained and competition is not restricted or distorted. The supplier of last resort should be chosen in a process that is non-discriminatory among the different suppliers.

PROPOSAL 6

THE COMMISSION IS PROPOSING IN SECTION 8.4 THAT FURTHER TO THE REMOVAL OF PRICE CONTROLS, THE COMMISSION WILL CONTINUE TO MONITOR MARKET ACTIVITY AND ANY SIGNIFICANT CHANGE IN MARKET CONDITIONS, IMPOSING APPROPRIATE REMEDIES ON ESB PES AND/OR ESBIE AS REQUIRED.

QUESTION 12 – 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.

We believe that it is entirely appropriate for the CER maintain regular monitoring to ensure that the ESB supply businesses continue to operate at or below the defined competitive thresholds. As we have previously stated we believe that the CER should include this threshold as a licence condition, and as such provide the ESB supply businesses with a clear incentive to stay within the defined thresholds.

PROPOSAL 7 – THE COMMISSION IS PROPOSING IN SECTION 10.3 THAT ONCE REGULATORY PRICE CONTROLS HAVE BEEN REMOVED, ESB PES AND ANY OTHER SUPPLIER MAY BE REQUIRED (THROUGH LICENCE) TO OFFER TARIFFS TO VULNERABLE AND OR OTHER GROUPS OF DOMESTIC CUSTOMERS, AS DEFINED BY THE COMMISSION, ON PRINCIPLES ACCEPTABLE TO THE COMMISSION.

QUESTION 13 – RESPONDENTS ARE INVITED TO COMMENT ON PROPOSAL 7, SECTION 10.3, THAT ESB PES, ESBIE AND ANY OTHER SUPPLIER WILL BE REQUIRED (THROUGH LICENCE) TO OFFER TARIFFS VULNERABLE AND OTHER GROUPS OF DOMESTIC CUSTOMERS, AS DEFINED BY THE COMMISSION, ON PRINCIPLES ACCEPTABLE TO THE COMMISSION. ARE YOU IN FAVOUR OF THE PROPOSAL? OUTLINE REASONS FOR AGREEMENT OR DISAGREEMENT. ARE THERE ANY OTHER SPECIFIC CONSUMER MEASURES REQUIRED WITH THE REMOVAL OF PRICE CONTROLS?

In a fully competitive market it is only fair that all suppliers are treated equally and as such we accept that the CER may feel the need to be more prescriptive in what tariffs are made available for these customers. However we would hope that any intervention by the CER would not distort competition. We believe that the CER would need to carry out further consultation with the industry on any proposed measures and their potential impact before making any changes to the current market structures.

QUESTION 14 – RESPONDENTS ARE INVITED TO COMMENT ON THE INTERIM WORK PROGRAMME OUTLINED IN SECTION 11.4 WHICH WILL DEVELOP THE CURRENT REGULATORY FRAMEWORK UNTIL THE ROADMAP HAS BEEN IMPLEMENTED (IN PART OR IN WHOLE) ARE YOU IN FAVOUR OF THIS APPROACH? OUTLINE REASONS FOR AGREEMENT OR DISAGREEMENT.

We welcome the CER's commitment to progressing both the K-Factor and tariff structures reviews, while the process of deregulation is under review. There were numerous issues identified in both of these consultations, such as global aggregation, transparency of energy costs, costs allocation and cost reflectivity issues and also how k – factors will be treated in a competitive environment. If all of these

issues are addressed they will go a long way to achieving the resolving the issues we highlighted as being prerequisites to deregulation. It is our belief that the necessary criteria for deregulation are unlikely to be met in 2010 and as such we believe it is essential that the CER continue to progress these issues at this time.