



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

Information Note

Roadmap to Deregulation - Legislative and Licence Changes

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1. Background

Further to the sustained positive changes in the electricity market and consultation with the industry, the Commission (CER) published a decision paper on a Roadmap to Deregulation (CER 10/058) in April 2010. Therein, the CER set out the criteria for deregulation of the business and domestic retail electricity markets. Based on the fulfilment of these criteria, as established by the Competition Review (CER/10/059), deregulation of all three business markets; Large Energy Users, Medium and Small Sized Business, will occur on 1st October 2010¹. The deregulation of these markets in October is conditional on any necessary legislative and licence changes. This note sets out the currently proposed changes and how they are being progressed. In publishing this note the CER aims to provide a clear understanding and certainty to the market of the legislative and licence frameworks that will be in place for 1st October, and beyond, which are necessary to deliver market deregulation and sustain competition.

2. Legislation & Licence Changes

The CER has decided to proceed 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 independent suppliers, each of which has at least 10% share of load (GWh) in the relevant market; and
- (iii) ESBCS and ESBIE combined serve 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, the Board must provide the CER with a satisfactory commitment for the rebranding of the Board's supply companies prior to the deregulation of the domestic market.

The decisions outlined in the Roadmap to Deregulation will require both changes to legislation and ultimately, changes to supply licences. As outlined in the CER's information note on the next steps to deregulation (CER/10/083), the CER is engaged with the Department of Communications, Energy and Natural Resources (DCENR) to implement the necessary legislative changes under SI60

¹ Subject to confirmation, one month in advance, of continued adherence with the criteria.

of 2005² and the Electricity Regulation Act, 1999, and is progressing the necessary licence changes in two stages: initially focusing on those necessary for deregulation of the business markets. The CER believes that these changes are in keeping with the aims and objectives of relevant European Legislation. They represent a positive step towards the further promotion of effective competition – a key goal of the “Third Package”³.

The “Third Package” aims to ensure that all customers benefit from effective competition. In this regard, the current form of price control regulation has been successful in fostering and incentivising competition and new entry to the market. However, given the significant level of competition that has developed in the past 18 months, the CER now deems it timely to transition to full deregulation. The cessation of end user price regulation is a step recognised and promoted by ERGEG to further effective competition. Recognising deregulation should deliver real benefits for consumers, it is however a hugely significant step and represents a marked shift in the regulatory framework. The regulatory model will change to one focussing more on market monitoring. The CER is mindful that all the market outcomes and customer impacts of deregulation cannot be clearly predicted.

In the event that customers do not benefit from deregulation, the CER is proposing that it be furnished with the power to re-introduce a more intrusive regulatory framework on ESB (“the Board”)⁴. This is fitting with the CER’s duty and power under Article 37 4(b) to impose measures, where appropriate, to promote effective competition and ensure the proper functioning of the market. In this regard the CER will be guided by heightened market monitoring that will provide a clear view of the levels of competition within the markets.

2.1 Legislative Changes

The DCENR is currently considering necessary legislative changes to accommodate market deregulation. The changes under consideration relate to the cessation of tariff regulation for the business market, while providing for continued regulation in the domestic market where deemed necessary. An additional change being considered is the ability of CER to re-introduce a more intrusive regulatory framework on the Board as a supplier of electricity (including its subsidiaries/ affiliates/ related undertakings). The removal of tariff regulation represents a marked shift in the regulatory framework and the CER is mindful that all the market outcomes and customer impacts of deregulation cannot be clearly predicted. It is not seen as prudent to rely, in the first instance, on competition law alone to remedy any unintended consequences. Therefore, the

² S.I. No. 60 of 2005, European Communities (Internal Market In Electricity) Regulations 2005

³ Insert 3rd package ref

⁴ Subsequently, as part of CER’s work programme, we will be consulting on the nature of regulation of all suppliers regarding the prices/services offered to customers.

power to re-impose regulation on the Board as a supplier of electricity, should market conditions require it, is seen as fitting.

One of the criteria used to determine when tariff regulation ceases is market share and ESB's share is determined by looking at all ESB supply businesses. Therefore any power granted to the CER needs to extend to all supply licences held by the Board (including its subsidiaries/ affiliates/ related undertakings). This suggested course of action is primarily in the interests of customer protection. The CER would be guided as to the necessity of intervention through its enhanced monitoring role under Section 37 (1)(J) of the Third package.

For those markets that have not yet met the criteria for deregulation, it is considered necessary for the CER to have the discretion to continue to regulate tariffs, through a more appropriate ex post control. The change in tariff regulation proposed is to move from an ex-ante to an ex-post review based on Maximum Allowed Revenues. This is a transitional step to the deregulated market.

The proposed legislative amendments to accommodate the above proposals, reflect the provisions of the "Third Package", that will be transposed into Irish Law in the near future. Where such monitoring indicates market distortion or restriction of competition, and/or that customers are not benefiting from competition, the CER should have the power to intervene and ultimately, if deemed necessary, impose some form of tariff regulation on the Board (including its subsidiaries/ affiliates/ related undertakings).

2.2 Licence Changes

Electricity Supply Licences are issued by the CER under Section 14 (1) of the Electricity Regulation Act, 1999. Under paragraph h of that Section, the Board currently holds the PES licence. The Board, operating under that Licence is subject to tariff regulation. It is obliged, as stipulated in Condition 8 of the PES Licence, to meet all reasonable requests to supply electricity (the Universal Service Obligation) and, in accordance with Condition 9, engage in the Economic Purchase of Electricity. Business separation conditions also apply where full operation and managerial independence is required⁵. These requirements are not imposed in the generic supply licences issued to other suppliers under paragraph 14(1) (b). The CER may, however, provide for additional conditions in such a licence. This was the case for ESB Independent Energy Limited, as a subsidiary of the Board, where its licence was modified to include additional conditions such as business separation.

⁵ Where full operation and managerial independence, from any affiliate or related undertaking of the licensee, or any affiliated of any related undertaking of the Licensee, or the intermediary activity, or any other Regulated Business of the Licensee

As highlighted in the CER's information note (CER/10/083), it is intended that any licence changes necessary for deregulation will be completed in two parts. The first, to give effect to any licence changes required to deregulate the business markets from 1st October 2010. The second, to address the remaining issues associated with deregulation, so called "day two" issues, including the designation and administration of the Supplier of Last Resort and Universal Supplier Obligations. This second part will also incorporate changes to the generic Supply Licence, as it applies to all suppliers, to give effect to the requirements of SI 60 of 2005 in relation to customer Codes of Practice and also any decisions coming out of the Customer Protection Consultation (to be published on September 2010). That second licence review will be consulted upon in Q1 2011, after the Customer Protection consultation.

The CER has conducted a review of the PES licence issued to the Board under Section 14(1)(h) of the Electricity Regulation Act, 1999. The CER has concluded that based on the provisions of the proposed legislative amendments submitted to the DCENR no changes to the PES Licence, currently held by ESB CS, are required.

It is envisaged that ESB CS⁶ will apply for a generic supply licence under Section 14(1) (b) of the Electricity Regulation Act, 1999 to service its deregulated business customers. The CER considers that this is a fitting approach given the particular conditions of the electricity supply licences issued to ESB Independent Energy and to ESB CS, as the PES. All other regulated customers of ESB CS will be served under its PES licence, with all existing licence PES licence conditions. Under this PES licence ESB CS will, initially at least, maintain its roles of PES and SoLR. However, in the longer term it is deemed fitting that the role of the PES should be offered to the market, as is currently accommodated for in relation to the SoLR.

As deregulation of the domestic market, based on market share, is currently expected to be in Q1 2011 or shortly thereafter, it is necessary for ESB to implement transition arrangements to enable it to compete effectively in the relevant business markets while continuing to operate as the regulated PES supplier. The CER will review and approve all necessary transition arrangements to ensure that ESB CS;

- Continues to observe all of the business separation obligations imposed on it (with exceptions as permitted by approval of CER)
- Ensures no cross-subsidisation between regulated and unregulated activities as required by licences

Although no change in the PES licence or any other electricity supply licence is currently deemed necessary for 1st October, it is recognised that there are "day

⁶ Note that the Roadmap referred to PES serving unregulated customers. However the PES licence does not allow for sales to unregulated customers and ESB CS requires a separate licence to serve these customers.

two” issues that could merit changes at a later stage, including the designation and administration of the SoLR and Universal Supplier Obligations. Further review of licences with regard to the following matters such as prohibition of cross-subsidies, discrimination in supply, separate accounts for the PES, prohibition of anti-competitive behaviour and business separation may be required.