Customer Bad Debt in Electricity & Gas Markets

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CER – Information Page

Abstract: The CER is consulting on proposals for an industry solution to deal with business (small and medium sized) and domestic customers that switch suppliers leaving debts with their old supplier.

Target Audience:

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

Responses to this consultation should be returned by email, post or fax and marked for the attention of Maurice Stack at the CER**.**

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

Related Documents:

- CER/04/044 – Management of Customer Arrears
- CER/05/060 – Management of Customer Payments & Arrears
- CER/09/136 – Debt Blocking

For further information on this document, please contact **Maurice Stack (mstack@cer.ie) at the CER.**

Executive Summary

The CER issued a decision paper on debt blocking (CER/05/060) in 2005 which stated that the change of supplier process and other market procedures should not include or accommodate objections for the purpose of restricting customers in arrears or debt from changing supplier. Following the publication of this decision, electricity and gas suppliers requested that the CER review this decision given their concerns that the economic climate was giving rise to higher amounts of customer debt and their view that there is an increase in customers changing supplier without settling their outstanding bills. Suppliers claimed that the available debt management tools were ineffective and submitted a proposal to introduce debt blocking for business customers.

The CER acknowledged the concerns of suppliers. However there were issues that it needed to consider such as the potential for the abuse of such a system, the potentially problematic experience of debt blocking in other countries and its compatibility with an EU requirement that customer switches are facilitated with minimum delay.

Another consultation paper was published in 2009. Nine out of the thirteen respondents broadly supported the introduction of debt blocking for business customers. While the CER has not issued a decision to date, there have been ongoing discussions with suppliers and other parties such as St Vincent de Paul (SVP) and Money Advice and Budgeting Service (MABs) who have suggested that the debt situation has worsened.

Given the undoubted adverse effect the current economic situation is having on customers and energy suppliers, the CER is considering whether to introduce some measures that may deter customers from leaving debts behind following switching.

The measures which are being considered are as follows:

1) Introduce debt blocking for business customers or
2) Introduce debt flagging for business customers and/or
3) Introduce debt flagging for domestic customers

Any measures put in place will require financial thresholds, for business and domestic customers, at which debt blocking or debt flagging would be triggered. Views are sought on what measures (if any) would be appropriate and what value of debt or time period owing, if any, should be used. The CER proposes that if a solution is adopted, a Code of Practice would be introduced. Additionally, views are sought on whether this is desirable and if so what it should contain.

Any solution would obviously have to comply with data protection legislation.

Responses to this consultation are due by 1st April 2011.

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1.0 Introduction

1.1 The Commission for Energy Regulation

The Commission for Energy Regulation (CER) is the independent body responsible for overseeing the regulation of Ireland's electricity and gas sectors. The CER 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 CER's jurisdiction to include regulation of the natural gas market, while the Energy (Miscellaneous Provisions) Act 2006 granted the CER additional powers in relation to gas and electricity safety. The Electricity Regulation Amendment (SEM) Act 2007 outlined the CER's functions in relation to the Single Electricity Market (SEM) for the island of Ireland. This market is regulated by the CER and the Northern Ireland Authority for Utility Regulation (the Utility Regulator). The CER is working to ensure that consumers benefit from regulation and the introduction of competition in the energy sector.

1.2 Purpose of this paper

The purpose of this paper is to seek the views of the public and the CER's stakeholders with regard to the issue of supplier bad debt and to obtain respondents' views on the proposed options for addressing the problem of customers leaving their supplier with a debt. The paper considers both debt blocking and debt flagging as mechanisms to address this problem, and looks at the associated issues around the trigger thresholds, customer engagement and data protection issues. In order to make an informed and impartial decision on this topic, the CER wishes to obtain comments from members of the public, the energy industry, consumer and business organisations, customers and all interested parties.

1.3 Structure of this paper

- **Section 2.0** outlines the background to the debt hopping issue,
- **Section 3.0** outlines options for an industry solution and the associated issues
- **Section 4.0** contains conclusions and next steps
- **Appendix A** contains a summary of the consultation questions.

1.4 Responding to this paper

Interested parties are invited to comment on the issues raised in this consultation paper by close of business on ***1st April 2011***.

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

Maurice Stack
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2.0 Background

2.1 Introduction

In 2005, the CER issued a decision paper CER/05/060 which stated that the change of supplier process and other market procedures should not include or accommodate objections for the purpose of restricting customers in arrears or debt from changing supplier. Since then, suppliers in both the electricity and gas markets requested that the CER review this decision given their concerns that the current economic climate is giving rise to higher amounts of customer debt and their view that there was an increase in customers changing supplier before they had settled their outstanding bills. At that time, the CER consulted on the suppliers proposal to introduce a 'debt blocking' industry solution for business customers.

2.2 Industry Proposals for the Business Market

In 2009, the CER consulted[1] on three alternative proposals:

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

As part of the 2009 consultation, the CER requested that suppliers submit written evidence to the CER to substantiate their claims. In particular the CER requested that suppliers provide quantifiable information to demonstrate the scale of the problem facing the industry. Thirteen submissions were received, nine of which broadly confirmed industry support for an industry solution for debt blocking for business customers. However, in the absence of sufficient evidence from suppliers which definitively demonstrated the scale of the problem, no decision was taken by the CER at that time. Since then the CER has continued to discuss the issue with suppliers and other parties such as SVP and MABs. They have reiterated their concerns over the issue of debt hopping and highlighted the recent escalation of the problem.

All non-confidential responses to the 2009 consultation are now published in conjunction with this re-consultation. One response has been edited as in part it referred to a particular incident and individual and this is not considered relevant to the policy issue.

[1] Debt Blocking (CER/09/136)

2.3 Driver for Change

The CER has been observing impact that the current economic climate is having on the electricity and gas sectors. The CER notes that customer disconnections, for non-payment of account, increased significantly in the electricity market in 2010, with the level of disconnections peaking at over 2000 in July and August. In addition to the CER observations, suppliers report that customers are increasingly not settling their final bills. As a result, there is a suspicion that customers are utilising the electricity and gas market switching process in order to avoid settling their bills.

In submissions to the CER, consumer and social advocacy groups such as MABS and SVP stated that debt blocking must be considered in any CER decisions concerning customer switching process. MABS expressed concerns that customers can switch more than once leaving mounting debts behind them which remain to be paid. SVP also raised concerns over customers changing suppliers and not addressing the accumulated debt, often with multiple suppliers. SVP suggested that some restrictions should be placed on customer switching to reduce the problems that this causes for both the indebted customer and supplier alike. At a recent industry meeting all suppliers currently active in the domestic market reported that debt was an escalating problem and stressed the urgency for a domestic market solution.

2.4 Conclusion

For the reasons set out above the CER is considering what action it should take to support suppliers in the current national economic circumstances. In doing so the CER concurrently wishes to protect competition and ensure that customers are treated fairly.

3.0 Debt Solutions

3.1 Introduction

The CER has previously considered introducing an industry 'debt blocking' objections process for business similar to the market process in the Northern Ireland electricity market. The CER is re-consulting on this option, and how it would apply to business customers, but is also seeking the views of respondents on the possibility of introducing a debt flagging objections process for both business customers and domestic customers in both markets. This section sets out the merits of each, the key features of the processes including the thresholds which would trigger an objection from a losing supplier, and also addresses the customer engagement and data protection issues. Finally this section considers the implementation issues associated with the introduction of any objections process.

3.2 Debt Blocking or Debt Notification?

The core processes for switching supplier in both the electricity and gas markets are fully automated through central market systems operated by ESB Networks for electricity and Bord Gáis Networks for gas. At a high level, the processes for both work on the basis that a gaining supplier signs up a customer and sends a change of supplier message via the central market systems.

In the electricity market the losing supplier receives a pending loss notification to advise that the customer has requested a switch. To date, industry discussions have centred on a debt blocking solution, which would allow the losing supplier to cancel the transfer process on receipt of the pending loss notice. An alternative option has also been proposed, which would see the losing supplier raise a flag on receipt of the pending loss notice. This debt notification flag on the market message would then alert the gaining supplier that the customer had an outstanding debt to the old supplier.

A point to note is that in the gas market there is no such pending loss notification message and the losing supplier is only notified of the customer loss when the customer has been transferred to the new supplier and the change of supplier process is complete. Therefore, more radical changes may be needed to adopt either of the two options in the gas market.

The two options for the electricity and gas markets are discussed below.

3.2.1 Debt Blocking

The introduction of debt blocking would allow suppliers to cancel the change of supplier process by stopping a customer from switching to another supplier if that customer had an outstanding debt with the old supplier. Objections for debt and contract default are allowed in the non-domestic electricity market in Northern Ireland and they cancel the transfer process.

The introduction of a debt blocking process into the Irish market would prevent those customers who switch in order to avoid debt or disconnection and would promote customers settling their bills before they change supplier. This would reduce the risks for suppliers by preventing an escalation of costs in the market. By preventing customers from switching when in debt, the customer has to settle their outstanding bills with their supplier before moving to a new supplier. However, this automatically biases the objections process in favour of the old supplier, removing all customer choice and hindering their right to switch. It introduces an impediment to an efficient and seamless switching process and in this regard may not be in keeping with the stated objectives of the Third Package[2]. Potentially, it leaves the switching process open to abuse by suppliers who may invoke the objection for reasons other than debt management.

3.2.2 Debt Notification Flag

Another alternative solution to address this issue suggested by suppliers is for a debt notification flag. This 'flag' could be raised by the losing supplier in the event of a change of supply request to indicate to the new supplier that the customer has an outstanding debt. This solution is akin to the Northern Ireland domestic market arrangements that have been put in place to allow for a debt contact process and the ability to transfer debt.

The advantage of the introduction of a debt notification flag is that the customer is not blocked by the old supplier from switching. It notifies the gaining supplier that there is an issue of debt and the gaining supplier can then make a commercial decision if they will take that customer.

Any resulting decrease in the level of outstanding debts would benefit competition and reduce suppliers costs associated with bad debt which would in turn benefit all customers. The CER favours the debt notification flag over the debt block mechanism as a means to address the current issue of debt hopping in both the business and domestic markets.

The CER also notes that the new Programme for Government has committed to move to a "pay as you save" scheme for energy efficiency measures by 2013. However, this scheme is not considered as part of this paper.

Q1. Respondents are invited to comment on the proposals for the electricity and gas markets;

1) to introduce debt blocking or debt flagging for business customers and/or
2) to introduce debt flagging for domestic customers.

[2] Third Package on Electricity and Third Package on Gas

3.3 Proposed Application

The 2009 consultation paper did not provide details of how an industry solution would be implemented. This consultation paper seeks further feedback on the customer eligibility and thresholds as proposed below.

3.3.1 Customer Eligibility

It is proposed that the debt blocking or flagging facility would apply to;

- low voltage business customers in the electricity market;
- all Non-Daily metered (NDM) business customers in gas market.

This facility would not be applicable for Large Energy Users (LEUs) in the electricity market or Daily Metered (DM) or Large Daily Metered (LDM) customers in the gas market. It is considered that the aforementioned customer categories ought not be eligible as the CER is of the view that given the size of these customers and the potential monies to be recovered, that such cases would be more appropriately dealt with commercially.

Q2. Respondents are invited to comment on;

1) the proposal to allow debt blocking/notification for small and medium sized businesses in electricity as well as all NDM business customers in the gas market. Are you in favour of the proposal?
2) the proposal not to allow debt blocking/notification for Large Energy Users (LEUs) or DM/LDM in the gas market?
Outline reasons for agreement or disagreement.

3.3.2 Grounds for Objection or Notification

The CER is seeking views on what grounds a supplier could actually raise an objection or a debt notification flag. The CER is proposing that debt flag or block could be raised;

a) in the event of contract default (for business customers only)
b) where a customer has amassed a level of debt over a certain threshold which has been outstanding for a period of time.
c) where a customer has amassed a level of debt below the industry threshold which has been outstanding for a period of time (this period would be longer that provided for in b.)

a) Contract Default

The CER is proposing to allow that the solution is triggered on the basis of contract default. The CER is proposing that this criterion would only apply in the case of business customers. The CER considers that contract default means the occurrence of a customer leaving their supplier before the expiry period of their contract. Given the nature of contracts, it could be possible for supplier to claim contract default for minor contract breaches. Therefore the CER is mindful that this provision could be used on grounds for which it was not intended.

b) Debt Threshold & Timing

When considering the level of debt that would trigger debt blocking or debt flagging, the CER considered the average domestic and business customer energy usage in both the electricity and gas markets. The CER is seeking views on the following proposed threshold limits.

For Business Customers;

- For small business customers where €500 or more remains unpaid 28 days after it falls due
- For above medium sized small business customers where €1,500 or more remains unpaid 28 days after it falls due

For Domestic Customers;

- Where €200 or more remains unpaid 56 days after it falls due

The CER is also seeking views on the time periods which should be allowed for before a supplier can raise a block or flag.

c) Time Limit for Smaller Debts

The CER is also minded to allow for a notification or objection to be raised for amounts of money below the industry thresholds which has been owed for a longer period of time than provided for in section b above, in the case of business customers.

The CER is also proposing that a notification can be raised where a sum of money remains unpaid 56 days after is has fallen due, for the below the industry thresholds;

- Greater than €250 for small business customers
- Greater than €750 for medium sized business customers

The CER considers that this provision may be required particularly in light of the seasonal nature of gas consumption where there is a high variance in winter versus summer bills.

Q3. Respondents are invited to comment on the proposed grounds for raising a debt block or notification;

1) Do you consider that it is appropriate to raise an objection or notification on the grounds of contract default? Is it an appropriate for this provision to apply for both business and domestic customers?

2) Do you consider that the proposed debt thresholds and timings in section b are appropriate? Do you think the monetary thresholds should be the same or different for electricity and gas? Do you consider that it is appropriate to apply both a monetary threshold and a minimum timeframe for the monies to be owed as criteria to raise a debt block or flag?

3) Do you consider that it is necessary, as outlined in section c above, to allow for objections or notifications to be raised for business customers for sums below the threshold where debt has remained unpaid for a longer period of time?

4) Respondents are invited to propose alternative grounds or suggested modifications to the grounds outlined above?

3.4 Management of the Process

3.4.1 Data Protection

Data Protection law prohibits any third parties such as suppliers from transferring personal information in their possession regarding a customer, without that customer's prior consent. This prohibition does not apply to business customers. The CER is of the view that at a minimum explicit upfront agreement from the customer at the point of sign-up would be required to satisfy Data Protection requirements in relation to the proposed debt blocking / flagging solutions for domestic customers. The customer's agreement could be acquired through via a tick box as part of the terms and conditions on the customer's contract with the new supplier.

However there may be other data protection issues to be taken into consideration, such as the instance where a customer who happens to be in debt and is transferred in error – in this example a new supplier will have been provided with personal data relating to a customer who may be unaware of switch or may not have given consent to switch taking place. Additionally, consideration needs to be given to the situation where a customer is disputing the amount allegedly owed, or that they are responsible for the debt i.e. in the case that a new tenant moves into a property where a debt has been amassed by a previous occupant.

The CER is proposing to adopt a debt notification or blocking model in the Ireland as a means of addressing bad debt in both the domestic gas and electricity markets, as noted above if one of these solutions were to be approved, data protection requirements would need to be satisfied which may include at a minimum;

- Explicit upfront agreement from domestic customers at the point of sign up would be required prior to personal data such as existence of bad debt being notified to a third party such as a new supplier.

Q4. Respondents are invited to comment on the means of acquiring customer agreement to the information on debt being passed to a third party?

3.4.2 Impact on Competition

The level of competition in all 4 relevant markets in electricity (defined in the Roadmap[3] as domestic, small business, medium business and LEUs) has been strong i.e. in 2010 the annual switching level was greater than 15%. All three business markets were deregulated on 1st October 2010 and the domestic market will be deregulated on 4th April 2011. In the gas market, switching has also continued to grow, with switching levels across all sectors of the market in 2008 to 2010, growing from 369 to 8,499 to 94,354 respectively in these three years.

The introduction of debt blocking or debt flagging may impact on the level of switching taking place as customers may be unable to switch until their debt has been paid or unless a new supplier is willing to have the outstanding debt transferred. In addition, if customers are asked by suppliers at point of registration for permission to check for outstanding debt then this may result in customers being more reluctant to switch. Ultimately, high levels of bad debt are passed down to all customers, so any solution which mitigates or reduces bad debt levels should have the result of benefiting customers.

Q5. What do you consider would be the impact on competition of a debt blocking or debt flagging solution?

Q6. What are your views on allowing for customer debts to be transferred between suppliers?

3.4.3. Regulatory Monitoring to Ensure Customer Protection

The CER is of the view that any industry solution should be applied fairly to customers and not abused by suppliers. The CER will monitor the market closely to see that all processes are being properly applied and will publish a Code of Practice that suppliers will be bound by. The CER review and amend the processes as required.

[3] Roadmap to Deregulation (CER/10/058)

Q7. Respondents are invited to comment on the proposal to introduce a Code of Practice for a debt blocking or flagging process. Are you in favour of the proposal? Outline reasons for agreement or disagreement.

3.4.4 System Requirements

The introduction of a debt blocking objection or notification flag may require changes to central market systems and processes. Currently, in the electricity markets the objections process just provides one reason code for an objection, namely, objection reason due to erroneous transfer. Therefore it may possible in the case of the electricity market to include an additional flag for reason of debt notification or blocking, although any proposal would have to be impacted by the Retail Market Design Service[4] (RMDS) prior implementing such a change to the market systems. However, in the gas market there is no provision for the outgoing supplier to object to a transfer on any grounds. Therefore, the introduction of a debt blocking or debt flagging process would require substantial modification of the change of shipper process.

[4] Retail Market Design Service (RMDS) is the "ringfenced" function within ESB Networks responsible for all aspects of the retail electricity market design on behalf of the Commission for Energy Regulation.

4.0 Conclusions and Next Steps

4.1 Introduction

The CER notes that the issue of bad debt has become more prominent over the last two years. In particular, the number of disconnection orders being requested by suppliers, particularly in electricity market, has increased due to an increasing number of customers having outstanding debt. The CER is therefore re-consulting on the introduction of an industry solution to debt hopping as a means of preventing customers from leaving outstanding debt with their old suppliers upon switching to new suppliers.

4.2 Summary of Proposed Measures & Proposed Thresholds

The CER is seeking views on introducing to the electricity & gas markets;

- a debt blocking or debt flagging process for business customers (with the exception of LEUs in electricity & DM & LDM in gas) and/or
- a debt flagging process for domestic customers.

Additionally, the CER is seeking views on what grounds a supplier could actually raise an objection or a debt notification flag.

The CER is proposing that debt flag or block could be raised;

a) in the event of contract default (for business customers only)
b) where a customer has amassed a level of debt over a certain threshold which has been outstanding for a period of time.

The CER is proposing the following for consideration by respondents;

For Business Customers;
- For small business customers where €500 or more remains unpaid 28 days after it falls due
- For above medium sized small business customers where €1,500 or more remains unpaid 28 days after it falls due

For Domestic Customers;
- Where €200 or more remains unpaid 56 days after it falls due

c) where a business customer has amassed a level of debt below the industry threshold which has been outstanding for a period of time (this period would be longer that provided for in b.) The CER is minded to propose the following for consideration by respondents;

For Business Customers;
Where a sum of money below the industry thresholds remains unpaid 56 days after it has fallen due:
- o Greater than €250 for small business customers
- o Greater than €750 for medium sized business customers

The CER is proposes that any such process would be subject to regulatory monitoring and a Code of Practice and seeks views from respondents in this regard.

4.3 Next Steps

The closing date for responses to this consultation is close of business April 1st 2011. Following receipt of responses to this consultation the CER will publish a decision in April 2011.

Appendix A – Consultation Questions

Q1. Respondents are invited to comment on;
1) the proposal to introduce debt blocking or debt flagging for business customers
2) the proposal to introduce debt flagging for domestic customers.

Q2. Respondents are invited to comment on;
1) the proposal to allow debt blocking/debt notification for small and medium sized businesses in electricity as well as all NDM business customers in the gas market. Are you in favour of the proposal?
2) the proposal not to allow debt objections for Large Energy Users (LEUs) or DM/LDM in the gas market?
Outline reasons for agreement or disagreement.

Q3. Respondents are invited to comment on the proposed grounds for raising an objection or notification;
1) Do you consider that it is appropriate to raise an objection or notification on the grounds of contract default? Is it an appropriate for this provision to apply for both business and domestic customers?
2) Do you consider that the proposed debt thresholds and timings in section b are appropriate? Do you think the monetary thresholds should be the same or different for electricity and gas?
3) Do you consider that it is necessary, as outlined in section c above, to allow for objections or notifications to be raised for business customers for sums below the threshold where debt has remained unpaid for a longer period of time?
4) Respondents are invited to propose alternative grounds or suggested modifications to the grounds outlined above?

Q4. Respondents are invited to comment on the means of acquiring customer agreement to the information on debt being passed to a third party?

Q5. What do you consider would be the impact on competition of a debt blocking or debt flagging solution?

Q6. What are your views on allowing for customer debts to be transferred between suppliers?

Q7. Respondents are invited to comment on the proposal to introduce a Code of Practice for a debt blocking or flagging process. Are you in favour of the proposal? Outline reasons for agreement or disagreement.