

Bord Gáis Energy Response to
CER Consultation Paper – Debt Blocking
CER/09/136

Introduction

Since the gas and electricity retail markets opened to competition, Bord Gáis Energy (BG Energy) has supported a market process which would allow Suppliers to raise an objection to a change of supplier where the customer is in debt. BG Energy has always viewed an objections process for debt as a way to improve the operation and credibility of the competitive retail market – it should not be viewed as a means to impede a change of supplier from occurring.

As with many other Suppliers, BG Energy has never agreed with the CER's view that an "objections process" is contrary to EU law (representing a barrier to switching) and therefore should not be allowed. As competition is now really developing in the Irish energy markets, we are seeing customers changing supplier as a way of avoiding debt ("debt-hopping"). Not only has this resulted in a significant increase in Suppliers' bad debts but it is also in danger of harming the reputation of the competitive energy market. We would therefore urge the CER to recommend an amendment to the market rules to allow for an objections process for debt for all customers and *at the very least* for business customers.

BG Energy Detailed Comments on CER/09/136

Section 2.2 – Suppliers Concerns and Debt Blocking Proposals

- BG Energy wholeheartedly agrees with the recent views expressed by Suppliers about the inadequacy of the current means of managing debt in this section. We would add that the CER, through its consumer protection measures such as the Codes of Practice, maintain pressure on Suppliers only to use disconnection of supply as a last resort. Therefore, customers can have built up significant sums of debt before disconnection takes place.

- BG Energy wholeheartedly agrees with the proposal put forward by Suppliers in 2007 that an objection process for debt is absolutely necessary and at the very least must be introduced for business customers.

Section 2.3 - Commission's Concerns Regarding Debt Blocking Proposal

- The CER states in this section that “debt is a risk in commercial environments and is not exclusive to the energy industry” and it is effectively up to Suppliers to manage that risk. This is fundamentally missing the point – energy is billed in arrears unlike the majority of other products. Customers can have used a significant amount of energy before they are billed for it and then are given more time to pay. Similarly, energy costs make up a significant portion of a customer's expenses (whether household or business expenses) – they are effectively receiving a costly product on lengthy credit.
- BG Energy does not agree that current measures being considered on revenue protection or improvements to debt management instruments will do anything to alleviate the risks from debt-hopping. At the end of the day, despite these measures, a customer will be able to leave its current Supplier with no notice and leave behind many months worth of unpaid energy usage. The Suppliers only recourse is to the courts to recover the money. This is not acceptable as a solution due to the time and money involved – invariably with a negligible outcome.
- The consultation also needs to consider BG Energy and ESB Customer Supply's Licence Condition where they have a “duty to offer supply”. Customers are well aware that they can come to BG Energy or ESB Customer Supply for a supply and these organisations are obliged to supply. Independent suppliers can of course refuse to supply but BGE and ESB cannot. This needs to be taken into account in the debate and the Licence Conditions need to be strengthened to stop this being abused by customers. We would ask the CER to note that in the GB market ALL suppliers have a Licence Condition duty to offer supply.
- Despite the CER's views put forward in this section about an objections process possibly being contrary to EU law, the EU has never opined on this

subject – despite an objections process being in place in many EU countries over a number of years. As the CER notes, the GB retail market has always had an objections process in place. The GB retail market is one of the most successful examples of de-regulation in the world. Part of this is attributed to the fact that the market has maintained credibility and stability through measures like the ability of Suppliers to object to a change of supplier for debt.

Section 3 – Next Steps: Proposals

- Proposal 1 (Maintain the Status Quo) – BG Energy does not agree with this Proposal and does not agree that improving revenue protection/ theft of gas legislation will assist in the change of supplier process. It is an entirely separate process and set of circumstances.
- Proposal 2 (Process Changes) – BG Energy does not agree with this proposal. It does not assist at all as it only addresses a small number of cases. What about all of the other cases where a customer changes supplier leaving debt behind but the Supplier has not yet issued a disconnection notice? As the CER is always pressing upon Suppliers, disconnection is a last resort – it cannot work both ways!
- Proposal 3 (Introduce Debt Blocking for Business Customers) - BG Energy wholeheartedly agrees with this proposal. However, BG Energy does not agree with the use of the terminology “debt-blocking”. It has negative connotations and implies that Suppliers want to block a change of supplier going ahead. Rather, Suppliers want to have the ability to object to change of supplier going ahead for a short period until the customer has repaid the outstanding monies owed – we do not want to “block” the change of supplier from happening at all as is implied by the use of this language.
- BG Energy would now like to address the questions posed by the CER in this section:-
 - *Who would monitor, police and assess the debt blocking process and ensure that such a system is not abused by Suppliers?*

- Market rules would be agreed by the industry to introduce an objections process. As with all other market rules, general operation would be monitored via industry fora – GMARG and IGG. CER chairs these meetings and could have any required input via these fora. BG Energy would also propose a mandatory Code of Conduct for all Suppliers. This Code will govern the behaviour of Suppliers using the objections process in order that all Suppliers abide by the same agreed rules and standards of behaviour.
- *As with the experience in the UK, would the debt-blocking system in Ireland have to be continually re-examined and altered?*
- The system in the UK was introduced many years ago at the start of market opening. When it was originally devised, it did not cover all eventualities or address all queries, therefore, it has required revision. The GB market is very dynamic and has therefore required many of its market processes for change of supplier (not just the objections process) to be reviewed and changed to adapt with changing circumstances. In the Irish market we could learn from the issues faced and mistakes made in the UK market over the years and implement an extremely robust system which should not require frequent revision.
- *What would classify as a default of contract?*
- A default results from a customer leaving a contract while owing monies due under that contract. The outstanding debt may arise for 2 reasons
 - The customer has failed to pay bills within a reasonable period after they become due
 - The customer leaves the contract (prior to the termination date) without settling the forward position taken by the supplier at contract execution i.e the customer seeks to leave without discharging the Mark to Market value of the contract as defined at execution.
- *What would be the debt threshold?*
- BG Energy believes that €500 owed outside of credit terms for a business customer should be the debt threshold.

- *Would suppliers be adequately incentivised to manage risk and minimise customer debt?*
- Suppliers are already incentivised to manage risk and customer debt as part of their normal business processes. It is clearly not in any competitive suppliers' interest to allow debt levels to rise.
- *Would additional requirements need to be placed on suppliers to help customers who they have debt-blocked to pay back what they owe e.g. payment plans?*
- Suppliers are already required by their Codes of Practice on Billing, Bill Payment and Disconnection to assist customers in debt. Suppliers in the interests of customer relations and good business practice actively engage in helping customers with payment plans where such a difficulty arises.
- *How could having a debt blocking procedure be reconciled with the ERGEG recommendation?*
- BG Energy believes that the ERGEG recommendation and an objections process are mutually exclusive. An objections process is compliant with EU law in that it neither penalises a customer for moving supplier (merely requests that they re-pay debt before leaving) nor does it represent a barrier to changing supplier (surely energy customers cannot expect to use a service without paying for it?)
- Moreover, the ERGEG report is only a recommendation. The Irish energy market need not follow the views expressed in the report particularly when there is a clear need and overwhelming support for an objections process for debt. We would argue that the credibility and stability of the competitive retail market is at risk without such a process.
- *In approving a debt blocking procedure, the Commission would be tacitly accepting that supplier allegations of customer debt are accurate. Would this affect the Commission's dispute adjudications?*
- The CER has powers to seek information from Suppliers to carry out investigations. Seeking information on a customer's debt levels would be no different. If the CER has concerns during a dispute adjudication

that a Supplier was misrepresenting debt levels then it could request a customer file.

- *What would be the cost of system changes to introduce debt blocking?*
- BG Energy believes the system changes required would be minimal; a new market message would be introduced as a result of this process; schema changes occur periodically in both markets – the costs would be no more than the periodic schema changes.
- *What would be the impact of introducing debt blocking on the overall debt levels in the energy industry?*
- Clearly, debt levels would be greatly reduced as there could be no changing supplier (debt-hopping) to escape debt.
- *Would pressure be put on the Commission to introduce debt blocking for domestic customers? The proposal in 2008 suggested an aged debt threshold of €500, however, this low threshold would presumably encapsulate some domestic customers?*
- BG Energy believes that an objections process is necessary for all levels of customer but is willing to accept that it is introduced in the business market as a more urgent priority. If the market rule was only introduced for business customers then it would only be applied to this category of customer – regardless of whatever debt threshold is agreed.