



**national consumer agency**  
gníomhaireacht náisiúnta tomhaltóirí

putting **consumers** first

## **CER Consultation regarding Customer Protection in the Deregulated Electricity Market**

The National Consumer Agency (NCA) welcomes the opportunity to comment on the Commission for Energy Regulation's (CER) consultation in relation to Customer Protection in the Deregulated Electricity Market. The Agency is available to meet with the CER to discuss these comments in greater detail if required.

The NCA acknowledges the recent statement from the Commission that the electricity market<sup>1</sup> is likely to be fully deregulated in the near future, subject to the combined market share of ESB PES and ESBIE being equal to, or less than 60%. This move reflects the natural progression of the deregulation process, which has seen new entrants to the retail electricity supply market secure growing market share, in particular in the past 2 years.

This Agency supports the operation of competitive markets as a means of delivering choice, quality and price competition to consumers, on the basis that fair competitive forces and general price awareness work best to drive the efficient operation of markets. The NCA welcomes the principle of deregulating the Irish electricity market as early as possible, however, the Agency is mindful of the valuable protections available to consumers in the current regulated market, for example universal access to service. For this reason, the Agency believes that the management of conditions facilitating an effective transition to a fully competitive electricity market needs to be carefully handled.

The National Consumer Agency enjoys regular liaison with the Commission for Energy Regulation, in the context of working together to protect consumer interests whilst supporting dynamic energy market development. The Agency notes the CER's

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<sup>1</sup> <http://www.cer.ie/en/electricity-retail-market-current-consultations.aspx?article=1af61d1e-baa4-4d6c-aebe-dbb402508a6a&mode=author>

most recent market share tracking data that shows that by end December 2010, the ESB's share of the domestic retail market had fallen to 60.4%, just above the threshold of 60% previously identified as the trigger for full deregulation of domestic tariffs. In this context, the Agency recognises that the move to full market deregulation is likely to follow in the first half of 2011, subject to ESB satisfactorily completing a re-branding exercise for its energy supply business, which is to be known henceforth as Electric Ireland.

Arrival at this market share threshold follows a period of intensive and sustained consumer switching to other electricity suppliers. The Agency notes that switching is now considered easy (26% of residential consumers reported having switched electricity supplier over the last 12 months and 97% of switchers found the process very easy or easy);<sup>2</sup>, however the NCA wishes to highlight that the characteristics of the current market are not those that will continue to apply once full deregulation is effective.

This is because current alternative suppliers compete only on the basis of offering tariffs below the standard regulated price. Once full market liberalisation takes effect, the "benchmark" effect of this reference price will no longer apply, as suppliers will be free to market an unlimited variety of alternative product offerings, which may have the effect of confusing consumers as to the underlying costs associated with each.

The Agency cautions against a blind assumption that the dynamic supporting current switching levels can be sustained under the new market conditions that will prevail once deregulation is complete. In particular, the Agency wishes to draw attention to experiences of utility market liberalisation in other countries, where full deregulation saw an explosion of product and tariff offerings allied with the loss of a "benchmark" regulated unit rate, resulting in consumer confusion and, at least in some cases, situations whereby consumers who switched did not, in fact, benefit from savings<sup>3</sup>.

Ultimately, well-informed consumers are good for business. They transact willingly, because they feel in control; they engage with competitive markets because they can clearly identify benefits accruing to them from so doing. Needlessly complex product offerings or obscure features and benefits should not be allowed to compromise the

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<sup>2</sup> <http://www.cer.ie/GetAttachment.aspx?id=9e3ef547-811d-40a5-8312-7f3c6fb57609>

<sup>3</sup> <http://www.ofgem.gov.uk/Markets/RetMkts/ensuppro/Documents1/Energy%20Supply%20Probe%20-%20Initial%20Findings%20Report.pdf>

rights of consumers in Ireland to access choice in their electricity supplies and to secure a fair deal, based on their individual needs and preferences. The deregulation of electricity markets in other jurisdictions has offered key learnings about what works well and what does not in promoting sustained competitiveness that delivers net benefits for consumers.

The NCA is anxious that Ireland should learn from these experiences and introduce measures to maximise consumer information and understanding of the range of products and tariffs available and correspondingly of the savings or product benefits available. In parallel, it is essential that adequate safeguards be put in place to secure continuity of supply and the protection of those least able to participate fully in competitive markets.

**Q1. Respondents are invited to comment on the proposal to promote active customer switching in the deregulated market? Are you in favour of the proposal? Are there alternative options, communications channels that should be considered, or specific groups which should be targeted? Outline reasons for agreement or disagreement.**

As already highlighted, the NCA believes that current levels of electricity supply switching are not guaranteed to be sustained into the future, once the introduction of new products and the loss of a standard “benchmark” tariff make direct product comparisons more difficult. It is therefore essential that workable proxies be developed to ensure that consumers can make reasonable comparisons between product/price offerings.

All domestic electricity customers in Ireland should be entitled to benefit from the advantages of a competitive market. For this reason, the NCA urges the CER to provide for measures that will deter suppliers from merely cherry-picking profitable or “desirable” customers, to the exclusion of others. Such measures should be focused on clarity of consumer information and marketing materials, and on ease of access to such information.

To facilitate this, the NCA supports the principle of promoting “active” customer switching on a sustained basis in a fully liberalised market. To this end, it suggests following the UK model, that categorises consumers as proactive, reactive or inactive on the basis of their engagement with the energy companies<sup>4</sup> and that provides for distinct campaigns and marketing/information approaches targeted at each group, depending on their characteristics and profiles.

Alongside clear, accessibly presented information, ongoing market monitoring measures to prevent the unwarranted exploitation of “captive” customers, whilst maintaining competitiveness in more switching prone/price sensitive segments of the market<sup>5</sup>, should be introduced. This proposal builds on evidence from the UK, where research has identified that some utility companies charge higher rates to incumbent customers than those available to new joiners.

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<sup>4</sup> <http://www.ofgem.gov.uk/Markets/RetMkts/ensupro/Documents1/Energy%20Supply%20Probe%20-%20Initial%20Findings%20Report.pdf>

<sup>5</sup> <http://www.ofgem.gov.uk/Markets/RetMkts/ensupro/Documents1/Probe%20summary.pdf>

In addition, measures should be introduced to ensure that switching remains straightforward for consumers, with supplier monitoring in respect of important features such as speed of changeover, clarity around final billing and reconciliation, non-discrimination in respect of preferred payment options etc.

**Q2. Respondents are invited to comment on the proposal to facilitate the development of tariff comparison tools. Are you in favour of the proposal? What is the preferred model for delivery? Are there alternative options which should be considered? Outline reasons for agreement or disagreement.**

As a matter of general policy across all areas of consumer transactions, the NCA favours price transparency and comparability. Correspondingly, the Agency actively advocates for accessible pricing information and product/tariff comparison data and tools.

A model which may be considered in the present context is that used by ComReg, in its callcosts.ie website. This website affords users of telephony & internet services the opportunity to identify product offerings most advantageous to their needs based on their consumption profiles and habits. The objectivity and commercial impartiality of a Regulator provided information source offers consumers the assurance of comprehensive comparison information that will be presented in the most accessible manner possible. However, the time and cost involved in providing such a resource can be significant.

In larger consumer markets such as the UK, private operators offer online price comparison tools across a range of products and services, however the size of the Irish market may be a constraining factor inhibiting the emergence of such commercially driven information repositories. Encouragingly, however, several privately run cost comparison sites serving other consumer segments in the Irish market have emerged in recent years. This may point to commercial opportunities for the provision of such services targeting the electricity market.

Whilst Internet based information services can be considered a significant resource, it is important to address the needs of consumers who, whether for reasons of Internet accessibility or due to age or technological limitations, may not be in a position to use online cost comparison tools. For such consumers, consideration

might be given to periodic publication via relevant media of survey-based information or of case studies highlighting savings to be achieved through switching.

**Q3. Respondents are invited to comment on any additional measures which could be introduced to enhance the switching process, making it easier for consumers. Are there alternative options which should be considered? Outline reasons for agreement or disagreement.**

The loss of a “benchmark” or regulated price following full market liberalisation risks prejudicing consumer interests to at least some extent, through making price comparisons more difficult.

The NCA urges the CER to consider all options to make product pricing transparent and comparable for consumers. Options for consideration might include providing information concerning average kWh pricing over the standard duration of contracts (or per billing period/ per annum) at relevant consumption thresholds, to enable consumers to compare and contrast different product offerings. Unit pricing based on similar parameters could also be helpful.

In any event, a clear focus must be maintained on the ongoing smooth operation of the switching process, including detailed analysis of switching related complaints and corresponding intervention by the Regulator, where relevant.

**Q4. Respondents are invited to comment on the proposal to develop a standard checklist that doorstep sellers would provide to customers, which would facilitate CER in monitoring good practice? Are you in favour of the proposal? What information should be included? Are there alternative options which should be considered? Outline reasons for agreement or disagreement.**

The NCA welcomes the principle of the CER developing a standard checklist for doorstep sellers and believes that this can help to clarify suppliers’ obligations, protect consumers and serve as one of the tools to assist the CER in its monitoring of the sector.

The NCA believes that the Doorstep Selling Regulations (Cancellation of Contracts Negotiated Away from Business Premises, SI 224/1989) are of direct application in

the case of energy products sold at the doorstep and these regulations should be considered a starting point for information that should be provided to consumers at the doorstep.

These regulations aim to prevent a consumer being misled or pressurised into entering into a disadvantageous contract and provide a number of protections. For example, the regulations outline the general information and cancellation form that needs to be provided to the consumer when entering into a contract at the doorstep. By tying such regulatory requirements into the proposed checklist, the CER could effectively protect consumer rights while assisting suppliers to make valid contracts with consumers.

A non-exhaustive list of information that the NCA suggests should form part of the checklist information provided to the consumer includes:

1. The name and contact details of the trader.
2. Information concerning the features of the product/service the consumer is agreeing to purchase, as well as details on the cost of the product. The latter cost details should be presented in the most accessible manner possible, including average price per kWh over the duration of the contract, if practicable
3. If a comparison is made between the trader's product and another trader's product as part of the sales process, the checklist should either include or indicate a reference source for, information that will enable the consumer to establish that like is being compared to like
4. The trader's reference number, contact information, product code and other relevant details to enable the contract or offer to be identified if the consumer needs to contact the trader
5. A clearly worded explanation that the consumer has a right to cancel the contract if they wish, how long this period lasts for and how this right can be exercised

In addition to the foregoing information requirements, the form and its usage instructions should be structured in such a manner as to ensure that it and all its contents are positively explained to the consumer, including confirmation that each

individual section has been either read by or to the consumer and that s/he confirms they understand it (a tick-box structure might be appropriate here). The form should be initialled by both sales person and consumer. Duplicate copies should be retained by both.

**Q5. Respondents are invited to comment on the proposal to develop an industry standard annual statement of price and consumption data? Are you in favour of the proposal? Are there alternative options which could facilitate customers to manage their consumption and asses competing offers? Outline reasons for agreement or disagreement.**

Whilst the NCA welcomes any proposals that support the principle of providing clear statements of consumption and pricing information, the Agency is of the view that once per year is too infrequent a period over which to provide consumers with easily accessible information regarding the cost of their electricity supply.

All billing correspondence, in whichever format supplied, should include minimum information regarding the costs of the particular product or package being used by the consumer, alongside clearly stated and easily deciphered energy consumption information relating both to the billing period in question and on a 12 month rolling basis.

Such information would allow consumers to assess the performance of their current product selection and to decide whether switching is an attractive prospect for them, based on their current circumstances. This would empower consumers with better information and promote the concept of active switching.

The NCA would also view such developments as a potential example of 'best practice' and would be in keeping with recent trends in consumer legislation. Keeping consumers informed regarding the price they pay for a product/service and how such costs are assessed, without introducing any unnecessary hurdles to access this information, is something that is both desirable and to be welcomed in the Irish market.



**Q6. Respondents are invited to comment on the proposal to require all licensed suppliers to adopt the principles of Universal Design in all communications with customers? Are you in favour of the proposal? Are there alternative options which should be considered? Outline reasons for agreement or disagreement.**

The NCA supports this proposal. Given the universal nature of the product being sold, it is incumbent on CER to ensure that all customers can adequately understand the material given to them by both the existing supplier and any potential new supplier.

**Q7. Respondents are invited to comment on the proposal to expand the definition of vulnerable customers? Are you in favour of the proposal? Are there alternative options which should be considered? Outline reasons for agreement or disagreement.**

The NCA recognises that the term “Vulnerable Customers” in relation to electricity supply enjoys a narrow definition in Ireland. The relevant CER Code of Practice defines vulnerable customers as those reliant on electrical life support equipment, visually/hearing/mobility impaired customers, disabled persons reliant on electricity for cooking or heating and who have been without electricity for a prolonged period. Customers registered as Vulnerable under this categorisation benefit from a greater degree of service protection as provided under the relevant Code of Practice.

Other jurisdictions have expanded their definitions of vulnerable consumers to include those more generally at risk of fuel poverty, including customers in rural locations, those with incomes below a certain threshold and those who may be hindered in relation to switching and gaining access to the best offers available. The latter category may include customers with restricted Internet access, no bank account, poor literacy or limited grasp of English.

The CER is proposing the definition of vulnerable customers be extended along the following lines: “Vulnerable Customers” to mean people who are:

(a) critically dependent on electrically powered equipment which shall include but is not limited to life protecting devices, assistive technologies to support independent living and medical equipment, and

(b) likely to be particularly vulnerable to disconnection during winter months for reasons of advanced age or physical, sensory, intellectual or mental health disability. The definition should recognise that for some customers this may be on a temporary (episodic or periodic) or permanent basis. This may include, but is not limited to elderly and disabled customers.”

The CER proposal goes on to suggest that all licensed suppliers should be required to offer registered Vulnerable Customers a tariff that is no higher than the standard tariff available from that supplier for that domestic customer category.

The NCA understands that the special protections afforded registered Vulnerable Customers have a commercial cost to suppliers and therefore that an excessively general definition of vulnerability in this context risks distorting the competitive environment. Nonetheless, the Agency has some sympathy for the approach in Northern Ireland, whereby vulnerability is defined in the context of safeguarding the personal welfare of the customer or a member of their household, with criteria for defining such vulnerability more broadly interpreted.

In equal measure, the Agency understands that a definition in line with that adopted in the Disability Act 2005, which has at its heart a framework for social inclusion, risks being so broad as to include those who, despite their circumstances, are not particularly vulnerable in terms of energy supply.

The NCA suggests that measures proposed around the use of Universal Design principles in all customer communications may go some way to supporting the needs of these consumers who, while they may not fall within the strict definition of Vulnerable Customers for the purposes of electricity supply services, are nonetheless at some risk of fuel poverty or potentially disadvantaged when it comes to fully participating in the liberalised marketplace through active switching.

Correspondingly, the NCA accepts that the proposed definition of Vulnerable Customers contained in the CER’s present consultation document, may be as broad as it is reasonable and practical to make it, in light of the concomitant obligations arising on suppliers.

Whatever form of definition is ultimately adopted, the Agency suggests it should be clear and unambiguous in its scope, ensuring clarity for suppliers and customers

alike as to who falls within its parameters. Critical assessment of compliance with provisions in respect of customers thereby defined as vulnerable should form an integral part of ongoing market monitoring.

The NCA respectfully suggests that all customers, and not only those defined as “vulnerable”, should benefit from a requirement to provide information about any standard tariff that is lower than the tariff on which they are currently registered.

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The **National Consumer Agency** (NCA) is a statutory body established by the Irish Government in May 2007.

Our aim is to provide strong and modern consumer protection, safeguarding consumers in Ireland and empowering them to understand and to exercise their rights.

To achieve our aim, we:

- ◆ Inform consumers of their rights through consumer information;
- ◆ Promote a strong consumer culture in Ireland through consumer education and awareness;
- ◆ Help business obey consumer law through our enforcement activities; and
- ◆ Represent consumer interests at all levels of local and national consumer policy development through targeted research and forceful advocacy.

In March 2010, the consumer financial services related information and education function previously under the responsibility of the Financial Regulator was transferred to the NCA, offering a one-stop shop service on consumer information and education issues in the Irish economy.