



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

Price Discrimination & Customer Protection in the Deregulated Electricity Market

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Abstract: The CER has consulted on the issue of price discrimination in the deregulated electricity market and has concluded that it would be premature to introduce a non discrimination clause to the market at this time. The CER will implement a number of customer protection mechanisms to promote customer engagement and active switching and continue to monitor the market to detect, and remedy, any negative supplier behaviour.

Target Audience:

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

Related Documents:

- [CER/10/058](#): Review of the Regulatory Framework for the Retail Electricity Market: Roadmap to Deregulation, Decision Paper.
- [CER/11/040](#); Price Discrimination & Customer Protection in the Deregulated Electricity Market, Consultation Paper.
- [CER/11/057](#); Price Discrimination & Customer Protection in the Deregulated Electricity Market, Decision Paper.

For further information on this Decision Paper, please contact Seán mac an Bhaird (smacanbhaird@cer.ie) at the CER.

Executive Summary

In April 2010, the CER outlined the requirements to be met for the deregulation of the electricity retail markets. The business markets were deregulated on 1st October 2010 and the domestic market was deregulated from 4th April 2011. With the full deregulation of the retail market Electric Ireland (formerly ESB Customer Supply and ESB Independent Energy) is no longer regulated by the CER, and Electric Ireland is free to compete in all sectors of the market. In September 2010, the CER awarded ESB a new licence under which it could offer unregulated tariffs to business customers from the 1st October 2010. With the deregulation of the domestic market, residential customers are also supplied as part of Electric Ireland's deregulated customer base.

In its capacity as the Public Electricity Supplier, Electric Ireland had an obligation of non discrimination. Heretofore this has meant that Electric Ireland, as the regulated Public Electricity Supplier could not discriminate between different customers or classes of customers. For example all domestic urban customers are charged at the same rate and all domestic rural customers are charged at the same rate. As an unregulated supplier, Electric Ireland is no longer subject to *ex ante* price regulation but to *ex post* market monitoring (as for all suppliers) which will be outlined further on in this paper. With the deregulation of the domestic market, Electric Ireland is free to set its own prices for all sections of its customer base.

Mindful of potential changes in an increasingly competitive market, which could cause customer confusion with increased tariff and product complexity, the CER has published its decision on a number of customer protection initiatives which seek to inform customers so that they may actively engage in the competitive market. In parallel, the CER will implement enhanced market monitoring to assess if customers are benefiting from competition. Some stakeholders have raised concerns that this approach in the domestic market could, unconstrained, give rise to concerns for customer welfare. The main concern is that the market incumbent could abuse its market position and some customers, or groups of customers, may 'get left behind' in terms of enjoying the benefits of competition, and inadvertently subsidise the discounts enjoyed by others. This issue was highlighted recently by Electric Ireland's announcement of new unregulated tariffs which have a range of discounts depending on customer payment type and product choice.

The CER sought the views of stakeholders on price discrimination in the deregulated market and the sufficiency of the combined measures proposed through customer protection initiatives and market monitoring to address potential issues. While suppliers may have differential offerings based on the cost to serve different customer groups, the CER has concluded that it would be premature to introduce a non discrimination clause to all suppliers in the market at this time. Having considered the issues raised by all respondents, in terms of

the need for customer protection and the potential impacts of a non discrimination clause on competition (and ultimately consumers), the CER is of the view that a non discrimination requirement is not justified at this time. To date, there has been significant and sustained switching activity where customers have shown a willingness to engage with the market. While this needs to be cultivated to ensure that all customers can benefit from competition, it does not provide sufficient justification for an *ex ante* market intervention while other market stimuli are available. The CER considers that there is a risk that intervention at this stage could potentially stymie the development of competitive offerings and reduce the incentive for customers to shop around.

The imposition of a non discrimination clause would remove much of the incentive for customers to exercise choice and curtail the need among suppliers to offer better value for money. If consumers do not, or cannot, search for better deals, electricity suppliers have no incentive to match their competitors' offers and so prices across the market will tend to be higher than they could be. This view is strongly put forward in the submission from the Competition Authority. The CER is also guided by recent consumer market research which shows that domestic customers have a high degree of unprompted awareness of independent competitors in the market. This is a positive position from which to introduce additional market supports such as the provision of more information on switching and greater clarity on promotions to encourage customers to switch.

The CER notes that this approach requires more active engagement on behalf of the customer to benefit from competition in the market. Therefore, the CER will proceed to implement a number of customer protection mechanisms to promote targeted customer engagement and support active switching, as detailed in [CER/11/057](#). The CER will also continue to monitor the behaviour of all suppliers' in the market, looking at current indicators such as numbers of suppliers in the market, market share, switching rates, complaints and disconnections etc. and will expand the scope of retail market monitoring, guided by best practice in other jurisdictions and by ERGEG in terms of its Guidelines of Good Practice on Retail Market Monitoring. The guidelines propose a broad range of indicators which consider market structures, retail market outcomes and customer satisfaction.

The CER is very mindful of the need to ensure all consumers are in a position to share in any benefits from competition, and to prevent certain groups of consumers from being excluded from same. The provisions of the 3rd Package allow the CER take action where it finds that customers are not benefiting from competition. So while differential tariffs based on customer segmentation and the underlying cost to serve allows suppliers to bring a range of offers to the market, the CER will continue to monitor how this approach is implemented and the impact on consumers.

In conclusion, the CER will not impose (save for that currently in the Public Electricity Supplier licence) a mandatory obligation of non discrimination on any

supplier in the market at this time. While the CER considers that it would be premature to impose such a condition, the CER reiterates its responsibilities to customer protection, in particular vulnerable customers, as set out in the 3rd Package. Where market monitoring indicates that customers (or classes of customers) are not benefiting from competition or that any supplier is engaging in negative behaviour, the CER will identify and implement appropriate remedies which, may include an obligation of non discrimination on one, or more, suppliers in the market.



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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

In April 2010, the CER outlined the requirements to be met for the deregulation of the electricity retail markets (CER/10/058). The business markets were deregulated on 1st October 2010 and the domestic market was deregulated from 4th April 2011. With full deregulation, Electric Ireland ¹(formerly ESB Customer Supply and ESB Independent Energy) is now free to compete in all sectors of the market. In September 2010, the CER awarded ESB a new licence under which it could offer unregulated tariffs to business customers from the 1st October 2010. With the deregulation of the domestic market, residential customers are now also supplied as part of Electric Ireland's deregulated customer base. The purpose of this paper is to establish whether it is necessary for a non discrimination clause to be applied in the deregulated electricity market.

1.3 Comments Received

The CER received 6 submissions to the Consultation Paper ([CER/11/040](#)) Submissions were received from the following organisations or individuals:

- Airtricity
- Bord Gáis
- Electric Ireland
- Endesa Ireland

¹ As per the decision on the Roadmap for Deregulation (CER/10/058), a criterion for deregulation is the provision of a satisfactory commitment to re-brand. ESB Customer Supply and ESB Independent Energy have now commenced their re-branding process with the launch of their new name, Electric Ireland. As is fitting, the CER will hence with adopt this name in all its publications.

- Energia
- The Competition Authority

On 13th May 2011, the CER published each of the responses received. The issues raised in these responses are addressed in Section 2.

1.4 Structure of this paper

- **Sections 2.0** outlines the detail of the substantive issues which the CER sought views on and is now making its decision on, and next steps.
- **Annex A** lists the additional conditions that were imposed on ESB with the award of a new supply licence to service its newly deregulated customer base.



2.0 Price Discrimination and Customer Protection

2.1 Introduction

In its capacity as the licensed Public Electricity Supplier (PES), Electric Ireland has an obligation of non discrimination. In a regulated market this meant that Electric Ireland, could not discriminate between different customers or classes of customers. For example all domestic urban 24hr customers were charged at the same rate and all domestic rural 24hr customers were charged at the same rate. This was also true for business customer categories prior to the deregulation of the business markets in October 2010. Further to the publication of the Roadmap and, in preparation for deregulation of the business markets, ESB applied for a 3rd licence under Section 14 (1) (b) of the Electricity Regulation Act, 1999. In September 2010, the CER awarded ESB a licence under which Electric Ireland could serve its unregulated business customers.

With the deregulation of the domestic market on 4th April, residential customers are now also supplied as part of Electric Ireland's deregulated customer base. As an unregulated supplier, Electric Ireland is no longer subject to *ex ante* price regulation but to *ex post* market monitoring which will be outlined further on in this paper. With the deregulation of the domestic market, Electric Ireland is free to set its own prices for all sections of the market. However, many stakeholders have raised concerns that this approach in the domestic market could, unconstrained, give rise to concerns for customer welfare. The main concern is that the market incumbent could abuse its market position and some customers, or groups of customers, may 'get left behind' in terms of enjoying the benefits of competition, and inadvertently subsidise the discounts enjoyed by others. This issue was highlighted recently by Electric Ireland's announcement of new unregulated tariffs which have a range of discounts depending on customer payment type and product.

Therefore the CER sought the views of stakeholders on the sufficiency of the combined measures proposed through customer protection initiatives and market monitoring. Respondents were invited to comments on the following consultation question. The respondents' comments are grouped according to issue raised.

Question 1 – Do you think that a further obligation of non discrimination is warranted in the deregulated market? If so, do you think that this obligation should be applied to Electric Ireland, or to all suppliers in the market? Is this policy conducive to market stability and to the development of competition? Outline reasons for agreement or disagreement. Are there alternative methods that should be considered to ensure that all customers can benefit from competition in the deregulated market?

2.2 Respondents' Comments

Experience in Other Jurisdictions

Three respondents noted that there are a number of distinct differences between the markets in Great Britain (GB) and Ireland. When referring to the Ofgem report² respondents commented that by comparison residential electricity competition is relatively new in the Irish market. Furthermore the concept of 'in area' and 'out of area' pricing is not a factor as there has been only one incumbent supplier in the Irish electricity market as opposed to 13 regional electricity companies in GB. Energia proposed that the only parallel between the two markets was the number of suppliers competing for the respective customer bases. Other respondents commented that in Northern Ireland (NI), the non discrimination condition is suitable as there is a dominant supplier in the currently undeveloped electricity retail market and as such comparing these two markets on a like for like basis is felt to be unsuitable and out of context.

Customer Protection

Electric Ireland supported the CER's desire to have appropriate customer protection measures for the deregulated electricity market and to implement initiatives that will ultimately provide customers with appropriate information to assist them in actively engaging in the market and to benefit from competition. Electric Ireland also referenced its response to the CER Customer Protection paper (CER/10/241). However, Electric Ireland also noted that in a functioning competitive market a business is naturally constrained from implementing unfair price discrimination in isolation of consideration of competing businesses responses and actions.

Airtricity cited 'Condition 4 of *Prohibition of anti-competitive behaviour of the Interim Public Electricity Supply Licence*', illustrating that its purpose is to ensure that a supplier who is dominant in a particular market segment cannot abuse this position to the disadvantage of end customers or to undermine competition developing. For example if a supplier was to have a large customer base that were not keen on moving supplier, and the supplier was to raise prices for this segment in a predatory manner or in a manner which displayed undue discrimination, they would be deemed to be in breach of the licence condition.

Bord Gáis Energy gave the opinion that if, in monitoring the market, the CER discovers that Electric Ireland is using its dominant market power to thwart competition by aggressively targeting customers and discriminating against certain segments it is likely that competition is not sufficiently robust. Therefore it would be more appropriate to re-regulate the incumbent rather than simply restricting the competitive process.

² [OFGEM \(2008\). Energy Supply Probe – Initial Findings Report.](#)

The Competition Authority (CA) commented that price discrimination can either reduce or increase overall consumer welfare and as such, any evaluation of the likely effects of price discrimination must be undertaken on a case-by-case basis. If an electricity supplier can differentiate between active and inert consumers, then the latter might not benefit as much from better deals as the former. However, the CA also noted that customer switching data shows that customers are still changing supplier and moving away from the incumbent but that some customers may be anticipating a price war and staying with Electric Ireland in the short term.

The CA also proposed that there should be a distinction made between those customers who have chosen to stay with their supplier from those who are potentially vulnerable because they find it difficult to switch supplier, noting that a non discrimination clause causes the number of consumers choosing to become informed to fall, as there is less reward to the individual customer for searching for lower prices. The currently high level of switching activity demonstrates a clear preference among a sizeable group of Irish electricity consumers for choice and their ability to exercise that choice through a user-friendly switching system. As such, the CA considered that the imposition of a non discrimination clause would remove much of the incentive to exercise that choice and curtail the need among suppliers to offer better value for money.

The CA noted that the nature of a business is to attempt to exercise some degree of market power and increasing market share is a legitimate business strategy and refers to *Section 5 of the Competition Act 2002* which prohibits only the abuse of a dominant position. The CA stressed that it is important to recognise that it does not prohibit dominance - only its abuse. It is the CA's view that there is the possibility that once deregulated; Electric Ireland may offer selective discounts to win back consumers who have switched to other suppliers. If such a pricing campaign was successful, Electric Ireland would then find itself rising back over the market share threshold set by the CER for deregulation, and accordingly risk having its commercial freedom to act restricted. The CA suggested that if some currently inert consumers are susceptible to behavioural biases then these biases can be addressed by, for example, presenting price comparison information in a form that is clear and easily accessible and that these consumers may only require a "nudge" to alter their behaviour.

Energia gave the view that despite what it considered were the possible shortcomings in CER's proposed customer initiatives for dealing with the potential for Electric Ireland to abuse its dominant position in the market, such behaviour is explicitly prohibited under competition law and as such the CER along with other parties have recourse to Irish and European competition Directives, case law and the court to remedy such behaviour. Energia also commented that proper enforcement of competition law in respect of abuse of dominance does require CER to undertake an effective monitoring role, a role

that should be considered paramount in the deregulated market. Energia suggested that through its proposed customer initiatives and market monitoring function, the CER can both directly monitor pricing behaviour in the market and, through the initiatives, educate and encourage customers to switch. These correctly targeted initiatives should look to address those considered to form part of a large inert customer base of the incumbent e.g. those in receipt of the free Electricity Allowance (FEA).

Free Electricity Allowance

Some respondents made specific comments in relation to the FEA. The Competition Authority suggested that the further low rate of switching among FEA recipients may also be attributable to the current arrangement in which Electric Ireland customers who are on the scheme have their allowance debited directly from their bill, while customers of Airtricity and Bord Gáis Energy receive equivalent cash payments to set against their bill. The CA believes that switching would be encouraged in this group if all scheme recipients were paid by the same payment method. The CA also noted that vulnerable customers may need more targeted intervention and suggested that there are a range of targeted and cost-effective measures which can be put in place which protect the most vulnerable in society, none of which are likely to raise prices.

Endesa Ireland suggested that the State should hold a competitive tender for the energy provider for all recipients of the FEA, who will then be charged the tariff as per the successful tender. Endesa proposed that recipients of the FEA would pay this same tariff for electricity exceeding the allowance amount. This should alleviate concerns regarding reluctance of these customers to switch; as the Government is paying for a large volume of this electricity it should be entitled to choose the most advantageous tariff.

Bord Gáis Energy proposed that the CER focuses its attention on 'liberalising' customer segments, such as the FEA, so that customers can and are willing to engage in the competitive market and choose between different suppliers, products and prices to suit their needs rather than simply be given a standard 'non discriminatory price'. Implementing a 'non discrimination clause' would in Bord Gáis Energy's view curb competition and innovation in the market instead of fixing the root cause of the potential problem.

Impacts of a Non Discrimination Clause

1. Price Discrimination

According to Electric Ireland the consultation paper assumes that it may adopt an unfair price discrimination policy based on customer segmentation which would give rise to inadvertent subsidies. Electric Ireland suggested that this was apparently an overly simplistic proposition and does not recognise the potential for any supplier to differentiate on price in a cost justifiable manner. Electric Ireland also noted that there is a considerable body of economic literature that indicates that the prevention of price differences is likely to harm competition, and similarly very little evidence that it would help those considered to be vulnerable customers.

Airtricity stated that the CER should lay out the regulatory structures that are needed to support the developing competitive markets while striking a balance between ensuring the correct level of consumer protection while not being overly imposing and constraining any possible competition.

The CA noted that if consumers do not, or cannot search for better deals, electricity suppliers have no incentive to match their competitors' offers and so prices across the market will tend to be higher than they could be. This could be an unintended consequence of a non discrimination clause.

2. Regulatory Burden

Electric Ireland took the view that the level of regulatory intervention at this early development stage in the domestic electricity market should be minimal, noting that the CER has sufficient regulatory powers to intervene and introduce effective remedies if and when required. Electric Ireland did not agree that there is a requirement for a further obligation of non discrimination in the deregulated market. However, if the CER should decide that a non discrimination obligation is required in the deregulated electricity market then it should be applied to all suppliers equally and not just Electric Ireland as an imbalanced regulatory burden is not in the long term interests of consumers. Electric Ireland also noted that given the very significant number of customers that are now with a supplier other than Electric Ireland the CER should approach this matter in the interests of all customers and not just a segment of the market.

The CA proposed that imposing a further regulatory instrument such as a non discrimination clause would amount to re-regulation and punishment for a company for being commercially successful. Furthermore the imposition of this in a recently deregulated market raises regulatory uncertainty as it is no longer clear whether the market operates under the rules of price regulation or competition law. This re-regulation is thought to be contradictory to the goal of achieving a competitive market and sends the wrong signal to market participants and to firms that may be considering entering the market. A response of this kind

might suggest a lack of regulatory confidence in the operation of competition in the market. The regulatory uncertainty such an action would create is something that the CER should avoid. The CA added that better results could be achieved by focusing on the implementation of the initiatives listed in the consultation paper that would remove the remaining barriers to switching and improve consumers' ability to make better informed decisions.

Energia considered that such clause in all suppliers' licences would reduce price competition, limit new product development and innovation, and likely lead to an overall increase in the costs paid by consumers.

Bord Gáis Energy suggested that if the CER believes that competition is robust in the Irish market – as is suggested by its deregulation of the retail markets – it should have confidence in the ability of the market to ensure the interests of customers are largely met. Bord Gáis Energy stated that it would not be in favour of a non discrimination clause in a deregulated market on any supplier, noting that the CER should seek to educate customers on choices and prices such that 100% of customers engage in the market effectively, monitor the market – taking action where distortions arise and provide a basis for re-regulation where competition is found to fail the customer and the market.

Endesa Ireland did not consider that an obligation on non discrimination is required as it would be burdensome on suppliers to provide evidence of non discrimination and may delay or stifle innovation in supplier offers, which would reduce the benefits of competition.

Other Comments

One respondent requested further information on the licence awarded to ESB to enable it to serve customers in the deregulated market, in parallel with its obligations as the PES. This respondent also sought clarification on the re-branding of ESB Customer Supply.

2.3 CER Response

The CER has considered the issues raised by all respondents, in terms of the need for customer protection and the potential impacts a non discrimination clause on competition and ultimately consumers.

Experience in Other Jurisdictions

Some respondents' commented about the suitability of drawing comparisons between the Irish market and the GB, and NI, markets. The GB market has been deregulated for a considerable period of time, and while different in scale and structure, Ofgem is particularly active in the area of customer protection and has

significant experience in market mechanisms for customer protection which can provide many useful lessons for the Irish market. The CER considers it prudent to consider the approach taken in other more mature markets when implementing policy, and learn from experience where appropriate. Also, the CER actively engages with the Utility Regulator in Northern Ireland on a range of harmonisation issues pertaining to the retail market and as such considers it appropriate to consider any relevant approaches to policy.

Customer Protection

In relation to the issues of customer protection, all respondents agreed that customers would be better served by specific initiatives that target customers where barriers or switching inertia may exist. The CER is also guided by recent consumer market research³, which shows that domestic customers have a high degree of unprompted awareness of independent competitors in the market. This is a positive position from which to introduce additional market supports such as the provision of more information on switching and greater clarity on promotions to encourage customers to switch. To this end, the CER has published a decision on customer protection mechanisms to be implemented in the fully deregulated market⁴. These measures are intended to inform customers, in a more targeted way, about market deregulation and the opportunities that increased competition can provide and also to provide them with the information they need to engage with the market and benefit from that competition.

Free Electricity Allowance

Some respondents highlighted the recipients of the FEA as a specific group of customers that should be targeted in the promotion of switching. Respondent's raised concerns about the current non standardised approach to the delivery of the allowance in the industry processes; some customer receive payment via a credit on their bill and others through a cash payment to their bank or post office account. It is worth noting that the CER's recent customer survey found that switching amongst FEA customers had increased significantly from 4% in 2010 to 14% in 2011, although this is still lower than for the rest of the population at 29% in 2011. The research sought to identify if this difference is due to concerns about switching or experience of switching among FEA recipients. It found that the primary reasons for not switching are the same as for the entire set of respondents. Although the proportion of customers stating the reasons are higher for FEA than for the rest of the population e.g. 69% of FEA customers identified 'no reason to' as a primary factor in not switching compared to 46% for the rest of the population.

³ CER 11/061 Findings from 2011 research on attitudes and experience in the domestic electricity market in Ireland.

⁴ CER 11/057 Customer Protection in the Deregulated Market.

Furthermore, recipients were asked if they were satisfied with the FEA payment into a post office or bank account and 81% of FEA recipients surveyed agreed that they were. However, it should be noted that a higher proportion of FEA customers have switched back to their original supplier in 2011, 19% compared to 4% in the entire respondent set. The survey concluded that the payment was only an issue for a minority of customers, but that it was important to provide reassurance to customers about the continuance of the payment when switching. However, notwithstanding the broadly positive feedback from the survey, the CER is keen to address the current imbalance within the industry processes for delivering the allowance to recipients. The Department of Social Protection is currently reviewing the structure of the scheme to ensure better value for money to the exchequer in the operation of the overall Household Benefits Package. The CER is working with the Department to support this process and deliver a solution which best meets the needs of customers, relevant stakeholders, and supports the competitive market.

Impacts of a Non Discrimination Clause

The CER notes that respondents were broadly unanimous in the view that real competition in the market should place an effective discipline on suppliers with respect to the any predatory behaviour and that a non discrimination clause could undermine the development of further competition. In particular, the CER notes the comments of the CA with respect to the potential for a non discrimination clause to stymie competition. The concerns are that any further imposition on the market could potentially result in very limited offerings by suppliers, diminish any incentive for consumers to switch, and is, as one respondent put it “contradictory to the goal of achieving a competitive market”. The CER broadly agrees with the CA’s assessment and considers that the imposition of a non discrimination clause could remove much of the incentive for customers to exercise that choice and curtail the need among suppliers to offer better value for money, which is contrary to the goals of the CER. Furthermore, the CER does not wish to create regulatory uncertainty in the market, which could damage competition and ultimately consumers.

Some respondents also commented that the application of a non discrimination clause should be applied to all suppliers, as it would present an unbalanced regulatory burden on just one supplier, the incumbent Electric Ireland. The issue of undue regulatory burden, and the potential implications for the market, is one which the CER is very mindful of. The high level of customer switching has led to the development of the Roadmap and the decision to remove price regulation in the domestic and business markets. The CER agrees with respondents that in the early days of deregulation, where competition is strong, general *ex post* measures applied to all suppliers are more appropriate and limit the potential regulatory burden. However, the CER also notes that the provisions of the 3rd

Package⁵ places an additional duties of care on national regulatory authorities with regard to market monitoring and customer protection. As such the CER will continue to monitor the market with respect to supplier behaviour and may impose such remedial measures as it sees fit which, may include an obligation of non discrimination on one, or more, suppliers in the market.

Market Monitoring

The provisions of the 3rd Package allows the CER take action where it finds that customers are not benefiting from competition. Where market monitoring indicates that the customer is not benefiting from competition, the CER may, under S.I. No. 450 of 2010, step in and take action. In parallel, the CER considers that additional market monitoring measures such as consumer surveys provide direct customer feedback on the reasons why customers don't switch. The CER will consult shortly on the range of indicators to be assessed in monitoring competition in the market and if customers are indeed benefiting from competition.

The CER will continue to look at current indicators such as numbers of suppliers in the market, market share, switching rates, complaints and disconnections etc. but will also be guided by ERGEG in terms of its Guidelines of Good Practice on Retail Market Monitoring which considers a broader range of indicators which look at market structures, retail market outcomes and customer satisfaction. The CER will review MRSO and supplier provided data to get a broader assessment of the state of competition. Suppliers could also be mandated to provide profile information on customers that have never switched to facilitate more detailed research and targeted campaigns. The CER will consult on the proposed market monitoring indicators in May 2011.

Other Comments

Finally, in response to the request for further information on the licence awarded to ESB to enable Electric Ireland to serve customers in the deregulated market, in parallel with its obligations as the PES. As stated in the consultation, this generic supply licence was issued to ESB under Section 14 (1) (b) of the Electricity Regulation Act, 1999. While this licence does not contain conditions with respect to relevant price regulation, it was issued subject to compliance with additional conditions on ring fencing and a prohibition on sharing information which maintains existing requirements between different units of the business – for information the additional conditions are set out in Annex A of this paper. As part of its programme of licence compliance, the CER will audit compliance with these conditions.

⁵ Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC

All supply licences have been issued to ESB as the parent legal entity. Electric Ireland is the new brand name for ESB Customer Supply and ESB Independent Energy. The re-branding process commenced with the launch of the Electric Ireland brand in December 2010, and while a period of dual branding is currently underway, it will fully replace the ESB supply names by end December 2011.

2.3 CER Decision

The CER will take no further action with respect to the imposition of a non discrimination clause at this time, but will continue to monitor the market to identify any negative behaviour and ensure that customers are protected.

Decision 1 – The CER will not impose (save for that currently in the PES licence) a mandatory obligation of non discrimination on any supplier in the market at this time.

2.4 Conclusions & Next Steps

The CER has concluded that it is not in the interests of consumers and competition to impose (save for that currently in the PES licence) a mandatory condition of non discrimination on any supplier in the market at this time. The CER will proceed to implement the range of customer protection mechanisms as set out in CER 11/057. The CER will also issue a consultation on market monitoring in May 2011.



Annex A List of Additional Conditions

- a) The issuance of this new generic supply licence to the ESB, under Section 14 (1)(b), will also be subject to ring fencing conditions with respect to any affiliate or related undertaking of the Licensee, or an affiliate of any related undertaking of the Licensee, or any other Business of the Licensee.
- b) All ring fencing arrangements continue to apply to licensed entities of the Board, except for those applying between the PES, ESBIE, ESB (as holder of the new licence). ESBIE can communicate with ESB, both as the PES and holder of the new licence, and vice versa. However, communication is not permitted with other affiliates, related undertakings or other business units except in accordance with the Protocol of the Disclosure of Commercially Sensitive Information (CER06/153) as already approved by CER.
- c) Assets cannot be shared except in accordance with existing Business Separation arrangements already approved by the CER.
- d) Continuation of separate accounts.
- e) All costs that are shared (and management charges, charges for assets shared, CfD allocation etc) are regulated to prevent cross subsidies.
- f) The new deregulated team cannot access any information relating to customers that are not currently served by ESBIE and / or PES. Information on customers that are not currently served by ESBIE and /or PES as of this date must be quarantined. However, the Commission will reflect further on the proposal to allow limited access to this information.
- g) Minimum ESBIE customer size threshold (225MWh) remains in place until deregulation of the domestic market.

Condition (f) was further qualified in a letter to ESB;

- Access to billing data of business customers [shall be limited to those] that have left ESB in the 12 months from 1st October 2009. This [access] shall only come into effect on the date of business market deregulation, Friday 1st October 2010.
- When the domestic market is deregulated, ESB shall only be permitted access to billing information of ESB's [domestic] customers current at that date i.e. existing customers at the date of domestic market deregulation. This provision is without prejudice to all relevant data protection legislation which applies.