

Clanwilliam House, Clanwilliam Court, Lower Mount Street, Dublin 2

Sean mac an Bhaird,  
CER,  
The Exchange,  
Belgard Square North,  
Tallaght,  
Dublin 24.

**21 March 2011**

**ESB Electric Ireland Response  
to  
CER Consultation (CER/11/040)  
on  
Price Discrimination & Customer Protection in the De-regulated Electricity  
Market**

**Dear Sean,**

ESB Electric Ireland is pleased to respond to the CER's consultation on Price Discrimination and Customer protection in the de-regulated electricity market.

We support the CER's desire to have appropriate customer protection measures for the deregulated electricity market and to impellent initiatives that will provide customers with appropriate information to assist them in actively engaging in the market and therefore benefiting from competition. Our previous response to the CER Customer Protection paper (CER/10/241) details our views on these matters.

We believe these measures are appropriate for the present state of market competition and development in residential electricity. There is nothing inherently wrong with the competitive market, or likely to go wrong, that would justify the introduction of a requirement for a further obligation of non-discrimination. The consultation paper assumes ESB Electric Ireland may adopt an unfair price discrimination policy based on customer segmentation and give rise to inadvertent subsidies. This is an overly simplistic proposition and does not recognise the potential for any supplier to differentiate on price in a cost justifiable manner. 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.

Over our long history of serving customers we have endeavoured to do so in a fair and equitable manner and our intention is to continue to do so. If the CER should decide that a non-discrimination obligation is required in the de-regulated electricity market then it should be applied to all suppliers equally and not just ESB Electric Ireland as an imbalanced regulatory burden is not in the long term interests of

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consumers. The Commission has market monitoring powers and also has the ability to resort to competition law in the event of any supplier acting unlawfully.

A more detailed response to the question raised in the consultation paper is outlined below.

**Yours sincerely,**

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**Gerry McDonald**  
**Regulation, ET&R,**  
**ESB Electric Ireland**

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**Q1.** 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?

## **Response - Q1**

We support the Commission's desire to have appropriate customer protection measures for the deregulated electricity market and to impellent initiatives that will provide customers with appropriate information to assist them in actively engaging in the market and therefore benefiting from competition. Our previous response to the CER Customer Protection paper (CER/10/241) details our views on these matters which can be summarised as follows:

- Customer Education Campaigns – in favour.
- Price Comparison tools – in favour but the market should be allowed to develop them over time.
- Doorstep checklist – not in favour of the development of a separate standard doorstep checklist. The market should be allowed to develop further.
- Annual statement – we believe this is a good idea but will be dealt with by smart metering and should wait until then.
- Communications with customers – we already apply the principle of Universal Design in our website services. We proposed an industry forum in which all stakeholders could participate in.

Our response reflected the early nature of domestic electricity competition in the ROI which will develop further over time. Our view is that the level of regulatory intervention should, at this early development stage in the domestic electricity market, be minimal. The Commission has sufficient regulatory powers to intervene and introduce effective remedies if and when required.

We do not agree that there is a requirement for a further obligation of non-discrimination in the deregulated market. The Commission consultation paper outlines the experience of GB and NI. In GB, remedies to reduce the level of discrimination were introduced after many years of competitive activity following the Ofgem Energy Supply Probe in 2008 covering gas as well as electricity. There are a number of distinct differences between the GB and the ROI markets:

- At the time of the Ofgem Probe Report competition in both electricity and gas were exceptionally well developed. By comparison residential electricity competition is relatively new in the ROI and the degree of competition in residential gas is currently at a very early stage of development and any unnecessary regulatory intrusions may deter further competitive developments

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- The concept of 'in area' and 'out of area' prices is not a factor in an Irish context as there has been only one incumbent supplier in each market (i.e. ESB and BGE in comparison to the original 13 REC's in the UK).
- In NI, the non-discrimination condition applies where a supplier is dominant. With the current undeveloped low level of competition in the NI domestic markets (electricity & gas) it seems sensible to have such a licence condition.

Over our long history of serving customers we have endeavoured to do so in a fair and equitable manner and our intention is to continue to do so. If the CER should decide that a non-discrimination obligation is required in the de-regulated electricity market then it should be applied to all suppliers equally and not just ESB Electric Ireland as an imbalanced regulatory burden is not in the long term interests of consumers.

Given the very significant number of customers that are now with a supplier other than ESB Electric Ireland the Commission should approach this matter in the interests of all customers and not just a segment of the market.

Finally it is worth noting that in a functioning competitive market a business is naturally constrained from implementing unfair price discrimination in isolation of consideration of the competing businesses responses and actions. The patterns of competitive rivalry and competitive dynamics in a market affects the strategic competitive positioning any business is likely to take.