



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

Customer Bad Debt in Electricity & Gas Markets

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CER – Information Page

Abstract:

The CER has decided that a debt flagging facility will be implemented into the change of supplier processes for Non Daily Metered customers in the gas market and all customers with the exception of Large Energy Users in the electricity market.

Target Audience:

This decision paper is for the attention of the energy industry, consumers, customer organisations, and all other interested parties.

Related Documents:

[CER/04/044](#) – Management of Customer Arrears

[CER/05/060](#) – Management of Customer Payments & Arrears

[CER/09/136](#) – Debt Blocking Consultation

[CER/11/044](#) – Customer Bad Debt in Electricity & Markets

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Executive Summary

In March 2011, the CER published a consultation paper which sought stakeholder views on options to address concerns about ‘debt hopping’ which have been raised by energy suppliers, consumer organisations, and social advocacy groups. The concern is that in the current difficult economic climate, customer and industry debt levels are being exacerbated by some customers’ changing supplier in order to avoid paying their arrears or to avoid a pending disconnection. Debt hopping, and indeed the high general level of debt, is acknowledged as a serious issue for the industry raising costs for suppliers and ultimately for all consumers. The consultation paper asked for respondents to provide their comments on two options to prevent debt hopping by introducing either (i) a debt blocking process or (ii) a debt flagging process into the business markets and/or a debt flagging process in the domestic markets. The CER also consulted on the appropriate debt thresholds that should trigger either of these processes.

The CER has in the past resisted proposals from industry to introduce any impediment to the switching processes in the gas and electricity markets. The switching processes have been shown in consumer surveys at domestic and European level to be easy and straightforward for consumers. Empirical evidence shows that switching levels, particularly in the Irish electricity market are one of the highest in Europe, with over one million switches taking place since 2009 in business and domestic markets. However, having accepted the need for a solution to address this current issue which now has social as well as commercial consequences, the CER is seeking to implement the solution which best meets the needs of all stakeholders in providing consumer protection, while also ensuring the market continues to develop in a competitive manner.

The CER has considered the merits of both the flag and block options and concluded that the flag is more consistent with the open market design that exists for both gas and electricity retail markets. Both markets operate on a supplier-centric model that sees the customer as the initiator in any switch. The retail market model is structured so that customers deal exclusively with the gaining supplier of their choice, and the processes have been designed to ensure that the losing supplier does not have any inappropriate powers to veto or delay a customer switch. The implementation of a block by a losing supplier runs contrary to this principle and would potentially act as a barrier to market entry; as such, and having weighed a variety of factors in coming to its decision, the CER does not consider it an appropriate solution for a developing competitive market.

Almost all respondents were supportive of one of the measures for business, and a majority were in favour of the flag option which was the only option consulted on for domestic customers. The CER notes the specific customer concerns raised by MABS and the St. Vincent de Paul, both of which advocated a flag solution for domestic customers, although St. Vincent de Paul also suggested

that a block should be introduced at incremental thresholds of debt. MABS reiterated the need for over-indebted domestic customers to be able to access a more competitive offering in the market. The CER does place particular weight on the views of these organisations as they are dealing regularly with customers facing difficulties, and are in a good position to evaluate their needs. Response was split on the flag / block option for business, with most of the suppliers supporting a blocking solution for business. The CER considers that the same principles of the market model should be afforded to business customers as well as domestic. However, large energy customers in both the electricity and gas markets will be excluded from the debt flagging process. The CER would be of the view that large energy customers do not meet the criteria for a debt hopping solution on grounds of customer or supplier protection and as such should be pursued for breach of contract through the established channels. It should be noted that a supplier is entitled to pursue any customer that is in breach of its contractual commitments.

Further to careful consideration of the options and the respondents' views and suggestions, the CER has decided to approve the implementation of a debt flagging facility into the change of supplier processes for both domestic and small/medium businesses in the electricity and gas markets. The implementation of a flag continues to facilitate customer choice but also empowers the gaining supplier to make a commercial decision about whether they will take on a customer with existing arrears. This measure supports suppliers in undertaking appropriate risk assessment as part of the customer acquisition process. The CER is of the view that the flag should restrict the practice of deliberate debt hopping by customers, providing an appropriate incentive for customers to address their arrears with the existing supplier and increased protection for suppliers. The thresholds for the application of a debt flag will be set as detailed in the table below. Outstanding deposits are not to be taken into account when determining whether a customer has reached these limits or not. As to the thresholds for the medium size businesses, given the particularly large variance in consumption across this customer category, the CER will give further consideration to the debt threshold, and issue a decision prior to implementation.

	Customer Category	Debt Value & Duration Threshold
Domestic	Electricity/Gas	≥ €250 for >42 days
Small Business	Electricity (LV-NonMD/DG5) Gas (NDM <73MWh)	≥ €750 for >42 days ≥€750 for > 42 days
Medium Sized Business	Electricity (LVMD/DG6) Gas (>73MWh NDM <5.5 GWh)	≥€to be determined for > 42 days
Large Energy Users	Electricity (DG7-10, TCons) Gas (DM & LDM)	n/a n/a

The threshold for small business customers is higher than that for domestic customers. The threshold for medium businesses will be greater again but, as stated, further consideration is being given to the appropriate level of the threshold. These increasing thresholds (from one customer category to another) reflect the relative size of the bills incurred by each party. There is also a timing factor which recognises the duration the bill is outstanding. The CER has decided that for all eligible customer categories the time outstanding is 42 days from the date the payment falls due, in total this would be 8 weeks from the date when the bill was issued, which reflects a typical 14 day credit period plus a 42 days grace period resulting in a flag being applicable two months from the date the bill falls due. The CER does not propose to allow for a flag to be raised in the event of contract default at this time, although this decision will be kept under review.

The details of how the flagging facility will be incorporated in the market messaging systems in both markets will be progressed by the industry forums i.e. the GMARG (Gas Market Arrangements Retail Group) and the IGG (Industry Governance Group). While the supplier centric market design is similar for both markets, the detailed retail market processes do vary and as such may present different implementation challenges. The CER notes that any IT change requires time for planning and implementation and in order to implement any new automated process in the retail market systems. The impact and level of IT development required will depend on the nature of the change required e.g. some changes will be schema impacting, some will require new market messages and some can be catered for by the DSO at the backend systems within the current messaging frameworks. Therefore sufficient time must be allocated to the development and delivery of such a solution. The CER also notes that in the electricity market, there are existing commitments regarding the delivery of the Retail Market Harmonisation Project which will preclude any development in 2011. Therefore an automated solution to facilitate debt flagging, as outlined above, is required to be implemented by the DSOs no later than 1st January 2013. However, given the need for an industry solution to this issue in the short term, an interim manual solution to facilitate debt flagging, as outlined above, is required to be implemented by the DSOs no later than 1st October 2011. While not ideal in any business with high volume transactions, manual solutions are possible and must be considered in the short term to address this issue and get a viable solution for suppliers and customers.

The CER will work with industry over the coming months to develop an industry code on debt flagging as part of the set of process documentation. This code will set out the details of how the process will work in practice and will include details such as the number of days the losing supplier will have to raise a flag after being notified of a change of supplier request, the actions the gaining supplier must take after they are notified of the flag and also the supplier reporting arrangements to the CER. The code will consider the implications for the dual fuel market where a customer may be in debt for one utility but not the other i.e.

flags cannot be raised to block an electricity switch when the customer has hit debt thresholds in gas and vice versa. The communication of debt information between one supplier and another constitutes the passing of personal information and therefore an industry code will also set down the requirements around customer permission, so that the flag process is compliant with Data Protection legislation. At present no further consideration will be given to the concept of a debt re-assignment protocol.

Debt hopping is acknowledged as a serious issue for the industry raising costs for suppliers and ultimately for all consumers. The CER hopes that the implementation of a debt flagging process will serve the industry and consumers to reduce incidences of debt hopping. However, this process should be considered to be a trial at this stage, and, depending upon how matters evolve, may be changed in the future. In particular, in de-regulated electricity and gas retail markets, it is absolutely crucial that consumers have the ability to switch easily between suppliers in order to ensure prices remain at the competitive level. The proposed system is designed to ensure that any barriers to switching arising are absolutely minimised, and if experience proved that the system significantly increased switching costs and lowered switching rates, then the CER would have to give serious thought to removing it. It is also important that customers who might not be able to switch due to an outstanding debt be afforded the chance for attractive offers to pay back that debt, and the CER will be monitoring supplier offers to ensure this is the case. The implementation and efficacy of the processes and code outlined above will be subject to ongoing monitoring by the CER and a 12 month review by Oct 2012.

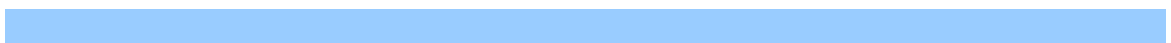


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1.0 Introduction

1.1 *The Commission for Energy Regulation*

The Commission for Energy Regulation ('the 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. 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 outline and describe the CER's decision with regard to ***Customer Bad Debt in the Electricity & Gas Markets***. The CER has carried out a full public consultation on this topic between 11th March and 1st April 2011 and has considered fully the comments and submissions received. Issues raised throughout the consultation process will be addressed in this paper, as well as outlining the final decision on this topic.

1.3 *Comments Received*

The CER received 13 submissions to the Consultation Paper (CER/11/044). Submissions were received from the following organisations and individuals:

- Airtricity
- Bord Gáis Energy
- ESB Electric Ireland
- Endesa Ireland
- Energia
- ESB Networks
- Flogas
- Gaslink & Bord Gáis Networks
- MABS
- PrePayPower.ie
- Ray O'Connor
- Society of St. Vincent de Paul
- Vayu

All responses which are not marked as private and confidential will be published in conjunction with this decision paper on the CER website.

1.4 Background Information

Suppliers in the gas and electricity retail markets have requested the introduction of an objections process into the change of supplier procedures operated in both markets. The request was for a process whereby a losing supplier can raise an objection to a switch. In this regard, the objection would be typically based on the fact that the customer has an outstanding debt owed to the supplier raising the objection or due to the fact that the customer is within the duration of a fixed term contract.

The rationale proposed by suppliers was that some customers actively use the change of supplier process in order to avoid paying their outstanding debt or to avoid a pending disconnection. Suppliers have argued that the current debt management options available to them such as security deposits, direct debits, prepayment meters, credit checks and disconnections are insufficient in preventing and dealing with such occurrences. An overall concern presented by suppliers is that instances of customers switching supplier and leaving an unpaid debt behind them increase bad debt levels for the whole industry which ultimately have to be paid for by all customers. Given the concerns being expressed by suppliers the CER issued consultations on the matter in 2004 and then again in 2009.

The CER, whilst acknowledging the concerns of suppliers, has to date maintained the view that the introduction of an objections process into the Irish market would be inappropriate. The CER has in this regard had a number of counter-concerns regarding an objections process, namely that such a process would not be in compliance with EC requirements that customers who request to switch should be facilitated to do so with minimum delay while respecting contractual commitments. Also, the fact that, apart from the Great Britain (GB) and Northern Ireland (NI) markets, such a process is not widely operational in other EU countries. Finally there was concern for the potential for such a process to be abused by suppliers

Notwithstanding the above the CER notes the impact that the current economic climate is having on the electricity and gas markets which has been especially evident in recent months. Over recent months, gas and electricity suppliers and customer protection organisations have indicated to the CER that there has been an unprecedented increase in customers experiencing difficulty in paying their bills. Suppliers have also noted a substantial increase in the number of payment plans being set up with customers due to issues with payment, many of which customers are subsequently unable to honour. Accordingly, the CER in monitoring the monthly disconnections for non payment being effected in both markets, observed a sharp increase in the number of electricity disconnections in

2010 and while this has abated somewhat from its peak in July / August 2010, the monthly figures remain high for 2011. Furthermore, in line with the increased pressures of the current economic climate suppliers have represented to the CER that in their view there has been a very evident increase in customers switching supplier without settling their final bill or arrears recently.

Customer organisations such as Money Advice and Budgeting Service (MABS) and the St. Vincent de Paul (SVdP) have also raised concerns with the CER (in their submissions to recent customer protection consultations) that in the current economy they are aware of energy customers who have switched supplier without settling their outstanding arrears. In their experience, such activity is leading to customers accumulating a number of debts with various suppliers in the market which is much more difficult to manage when the customer eventually contacts them for assistance than if the customer had a debt with only one supplier. In this regard, both MABS & SVdP have asked for the CER to consider the introduction of a process to prevent customers engaging in such an activity. This is because, in their view, while it helps such customers avoid disconnection in the short run, it creates greater difficulty for them in the long run when they have accumulated debt with all energy providers in the market.

The CER is now of the view that the confluence of changes in the Irish economy and the consequential impact on customer behaviour and ability to pay warrants a review of the change of supplier process and its ancillary procedures. In line with this, on the 11th March 2011, the CER published the consultation on customer bad debt in the electricity and gas markets.

1.5 Structure of this paper

Section 1 sets out the background to the discussion of this topic, the rationale for the publication of the consultation and also informs as to the number and names of respondents to this consultation.

Section 2 sets out the content of the consultation as well as the proposals posed for consideration to interested parties in this regard.

Section 3 sets out the respondents' comments in relation to the questions posed in the consultation paper as well as the CER's response to those comments.

Section 4 sets out the CER's decision on the matter after consideration of the options and all comments and suggestions put forward by respondents in this regard.

Section 5 sets out the conclusions of the paper and the next steps with regard to the implementation of the CER's decision.

2.0 Consultation Proposals

2.1 Introduction

On the 11th March 2011, the CER issued a consultation CER/11/044 on Customer Bad Debt in the Electricity & Gas Markets. This consultation was issued to seek views on possible actions that could be taken to address the concerns that customers are switching suppliers without settling their arrears. The CER noted that any decision would seek to address this current issue which now has social as well as commercial consequences, the CER is seeking to implement the solution which best meets the needs of all stakeholders providing consumer protection in a sustainable and competitive retail market.

The potential actions posed in the consultation paper were based on options to implement some form of debt blocking or debt flagging process into the change of supplier procedures in the electricity and gas markets.

2.2 Debt Blocking & Debt Flagging

2.2.1 The Change of Supplier Process

A customer Change of Supplier (CoS) is processed through a series of customer/supplier/DSO transactions. The retail gas and electricity markets are structured on supplier centric models, where the customer selects the supplier that they want to move to, and the rest of the process is managed on their behalf through that supplier. The customer makes the request through their chosen channel e.g. by phone, online, doorstep and provides the relevant information to the supplier who then generates a change of supplier, an industry standard, request that is forwarded to the networks business for validation and processing. The industry processes from the point where the order is generated by the supplier to when it is completed by the networks business, are automated. The automation allows for industry wide reporting on how orders are progressing and monitoring the time to complete etc. ensuring that the networks business is delivering within the agreed industry timeframes in a non discriminatory manner for all customers. The system acts as an interface between suppliers and the relevant networks business, the central market system is 'Gas MaP' in the gas market and 'Central Market System' in the electricity market.

In both the electricity and gas markets, where a supplier acquires a new customer, the supplier sends a market message to the Gas Point Registration Operator 'GPRO' in Bord Gas Networks (BGN) or Meter Registration System Operator 'MRSO' in ESB Networks (ESBN) requesting that the customer is registered or 'switched' to them.

Gas

In the gas market, if all the information in the CoS request market message passes validation tolerances, the request is processed and a market message is sent to the gaining supplier informing them that the customer is now registered to them. Another message is sent to the losing supplier letting them know that they have lost this customer. There is currently no provision for the losing supplier to object to the customer switching on any grounds, furthermore in the gas market the losing supplier is not aware that the customer has initiated the CoS process until the day before the customer is registered to the gaining supplier. A cancellation order for a given CoS transaction can only be initiated by the gaining supplier.

Electricity

In the electricity market, when a CoS request is submitted by the gaining supplier, the request is not processed straight away as both the gaining and losing supplier has a period of time to stop the switch proceeding on the grounds of erroneous transfer i.e. where they are notified that the switch was initiated in error for reasons of incorrect MPRN or address. If no objection for erroneous transfer is raised in the timeframe provided, then the request is processed by the MRSO and the customer is registered to the gaining supplier. As in the gas market, both the gaining and losing supplier are notified of the change of supplier request via market message. A cancellation order for a given CoS transaction can only be initiated by the gaining supplier.

The consultation paper looked for comments on proposals to incorporate a debt blocking or debt flagging provision into the change of supplier processes in both markets. The operational principles of both provisions are outlined below.

2.2.2 Debt Blocking

The principle of a debt blocking solution as proposed in the consultation is as follows; where a gaining supplier submits a CoS request, the losing supplier is notified of this request. The request is then held and the losing supplier has a period of time, 7 working days for example to flag to the gaining supplier (via the central market systems and DSO) that the customer associated with that M/GPRN is currently in arrears in line with the protocol agreed by industry. If the losing supplier raises such an objection, it triggers an automatic cancellation of the change of supplier request. If the losing supplier does not raise an objection within the 7 working day period after the request is submitted, then when this time has elapsed, the CoS request is processed and the customer is registered to the gaining supplier. As noted above, the generation of a cancellation by a losing supplier is currently not allowed in either the gas or electricity markets.

Variants of a debt blocking solution are currently in operation in the U.K. and in the business markets in Northern Ireland.

2.2.3 Debt Flagging

The principle of a debt flagging solution as proposed in the consultation is as follows; where a gaining supplier submits a change of supplier request, the losing supplier is notified of this request. The request is then held and the losing supplier has a period of time, 7 working days for example to flag to the gaining supplier (via the central market systems and DSO) that the customer associated with that M/GPRN is currently in arrears in line with the protocol agreed by industry. If the losing supplier raises such an objection, it triggers an automatic flag on the change of supplier request which would advise the gaining supplier that there is debt on that associated account. The flag from the losing supplier to the gaining supplier would occur indirectly via the GPRO or MRSO. If the gaining supplier receives a market message from the GPRO/MRSO indicating that the losing supplier has flagged a debt, it is then up to the gaining supplier to make the commercial decision whether they wish to proceed with their change of supplier request and take on the customer. If the gaining supplier decides not to take the customer, they can issue a cancellation as per the current process which would in turn inform the losing supplier that the switch has been cancelled. If the losing supplier does not flag that the customer in question has an outstanding debt within the 7 working day period after the request is submitted the change of supplier request is processed and the customer is registered to the gaining supplier.

A form of debt flagging is currently in operation in the domestic electricity and gas markets in Northern Ireland.

2.2.4 Debt Blocking Vs. Flagging

In summary, the core process differences between debt blocking and debt flagging relate to;

- (i) the responsibility for the decision to block/flag, and
- (ii) the party with whom the customer engages.

With debt blocking, where an objection is made the request is automatically cancelled however with debt flagging, the request is not automatically cancelled but is instead dependent on a decision by the gaining supplier on whether to proceed with the registration or not. Under blocking the losing supplier is the decision maker and with flagging the gaining supplier is, in the most part, the decision maker.

A similar point from the customer's perspective is that the supplier with which the customer would need to engage with subsequent to being objected to, differs under the two proposals. With the blocking option, the customer would progress the repayment of their outstanding arrears with their current supplier and once this has been settled they would then re-approach their chosen new supplier who will initiate the change of supplier process again. With the flagging option, the

customer would engage with the new supplier as to the next steps after a flag has been raised rather than the one to which they owe the debt.

There are a number of actions which could be taken after the flag has been raised, the specifics of which were not looked at in detail in the consultation paper. The supplier could be left to make the decision themselves as to whether they wished to continue taking the customer or not, if the decision was not to, the next steps would be the same had the customer been blocked. However, the supplier could conversely agree to continue with the switch subject to additional conditions of supply such as a higher security deposit. Such provisions exist for customers in the same situation in the domestic market in N.I. where debt transfer is an option available to customers in order for them to proceed with a switch where they have been flagged.

2.3 Consultation Paper Proposals

The consultation issued by the CER sought views on introducing to the electricity and gas markets;

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

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

The consultation proposed 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.

and also;

- 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 than that provided for in b.)

The consultation noted that in order to ensure an auditable and transparent process, it would be sensible to agree thresholds and timings which would ensure there is minimal ambiguity around if and when a flag or block could be raised. In line with this the CER posed the following for consideration by respondents;

Under provision b);

- 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

Under provision c)

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

The consultation paper noted that any such process would be subject to regulatory monitoring and a Code of Practice to ensure that customer protection is guaranteed. The CER noted that respondents in providing their views in response to the paper should be cognisant of data protection considerations, the impact of such a process on competition and also the practicalities of implementing a debt blocking or flagging process via market interfacing systems.

3.0 Summary of Consultation Responses

3.1 Respondents Comments & CER's Response

The CER asked respondents to provide their views on the proposals put forward in the consultation to address the growing concerns regarding debt levels presented by both suppliers and customer organisations in recent months, or provide alternative suggestions. This section provides a summary of the comments received from interested parties in response to the particular questions outlined in the consultation paper.

3.1.1 Debt Blocking and Debt Flagging – Business & Domestic

Consultation Question 1: Respondent's are invited to comment on the proposals for the electricity and gas markets; 1) to introduce debt blocking or debt flagging for business and/or 2) to introduce debt flagging for domestic customers.

Respondents' Comments

With the exception of one respondent, all submissions noted that they were in favour of the implementation of either debt blocking or debt flagging. This respondent noted that bad debt is common to all markets and that the proposal to introduce debt blocking or flagging only seeks to protect suppliers who have undertaken reckless customer acquisition and who manage their processes poorly, from real competition in the now deregulated electricity market.

With regard to business customers, six respondents noted that they were in favour of debt blocking; four respondents noted that they were in favour of debt flagging and one respondent noted that they were supportive in principle of both options.

With regard to domestic customers, two respondents were in favour of debt blocking, eight respondents were in favour of debt flagging, one respondent suggested that domestics should be both debt flagged and blocked depending on the level of debt and one respondent noted that they were supportive of both flagging and blocking in principle.

Two of the respondents who noted that they were in favour of debt blocking noted that they would accept debt flagging as a second preference.

On a high level, some of the rationale provided in submissions in support of a debt blocking or flagging procedure was as follows;

- The instances of customers debt hopping to avoid debt & disconnection has increased in both the business & domestic markets.
- The economic climate is proving difficult for people – there is a major increase in payment plans but these are being broken daily. Businesses are under pressure and are taking advantage of the change of supplier process.
- Debt hopping increases market costs and hence increases costs for all customers. Suppliers being left with debt are inhibited from being able to price competitively to the detriment of customers.
- Debt is a serious & major problem for all suppliers and is worsening.
- Suppliers operate on very small margins and are too exposed. Current debt management instruments are insufficient.
- Customers who debt hop face the possibility of running out of options in a small deregulated market.
- Debt blocking encourages people to manage their arrears in a more timely fashion. Without debt flagging customers will remain in denial about their debt.
- Debt blocking & flagging works effectively in other markets.
- Debt blocking or flagging will help competition and protect customers.

A respondent who was supportive of debt blocking and not flagging noted that flagging is an ineffective approach as the customer can still move whilst leaving a debt. Conversely another respondent who was in favour of debt flagging and not blocking noted that blocking is a barrier to entry whilst flagging would provide greater transparency for suppliers. Another respondent seconded this noting that debt blocking is not conducive to the operation of a free electricity market.

CER's Response to Comments Received

Customers have a right to switch supplier and the action of suppliers and their processes should not interfere with this right. This right is protected in European Legislation, which states that:-

*Member States shall ensure that:
where a customer, **while respecting contractual conditions**, wishes to change supplier, the change is effected by the operator(s) concerned within three weeks;*

The legislation also requires that Member States shall ensure that this right is granted to customers in a non-discriminatory manner regarding cost, effort or time. The CER upholds the principle concerns about limiting a customer's right to switch that it has expressed in the past about a debt based objections process but notes that the customer does have an obligation to meet its contractual commitments. Namely that it would add a disruption to the relatively swift and straightforward switching processes which are currently in place. It could be seen as contrary to the principle that customers should be facilitated in their request to switch with ease and minimal delay, and furthermore that there is also a risk that

the process could be misused by suppliers. The CER thus agrees in principle with some of the comparable concerns expressed by a number of respondents.

Notwithstanding this however the CER is mindful of the unprecedented economic circumstances, the difficulties which customers are currently facing in this regard and the incidental impact that this is having on suppliers and the wider customer base in the energy market. Additionally the CER accepts the view put forward by consumer protection representatives that customers will get themselves into greater difficulty where they temporarily avoid their debt situation with one supplier by switching to another.

In considering this and the arguments put forward in the previous section, the CER now considers that it is timely to implement a form of debt based objections process, at least in the short run.

In this regard, the CER is in agreement with those respondents who suggested that this will reduce the incidences of customers switching supplier and leaving large debts behind them. As a consequence it is hoped that this will in turn reduce the bad debt levels and associated costs in the industry, thus enabling suppliers to offer more competitive tariffs to customers. Furthermore, the CER expects that limiting the possibility for such debts to accumulate may create more market certainty and may encourage further market entry by new retail suppliers.

Debt Blocking or Flagging

With the decision taken that a form of debt based objections process should be introduced, the CER has considered at length the pros and cons of the debt blocking and flagging options posed in the consultation paper. The CER has had regard for the comments and suggestions put forward by respondents in relation to these two options. The CER also notes that any change to retail market policy applies equally to both the gas and electricity markets. All decisions in this regard will be taken in the context of a dual fuel market

In considering whether flagging or blocking is appropriate, the CER has looked at a number of aspects from the customer, supplier and networks perspective. The aspects considered include; effectiveness of the process, impact on the customer, impact on the suppliers (process management), impact on the DSO (ease of operation and timeframe for implementation), monitoring and regulatory oversight, and data protection,

(i) Customer Impact

Each option must be reviewed in terms of its impact on the customer, on their rights to participate in the market and switch supplier, the nature of the interaction with the supplier but also in the context of customer protection.

From the customer perspective where a block occurs, the request is automatically cancelled. Thus, in order for the customer to be able to progress the switch, they must revert to their losing supplier and make an arrangement to pay their arrears. If the customer is not able to pay their arrears in full relatively quickly, blocking could result in customers who may need to obtain the savings the most i.e. those in debt, being prevented from moving to a cheaper tariff for time it takes them to pay back their debt. With a flagging process, there is the option for the gaining supplier to continue with the switch where a customer has been flagged, if this is the case the customer would be able to avail of the cheaper tariff immediately, notwithstanding their existing contractual commitments.

(ii) Overall Effectiveness of the Solution

With regard to the effectiveness of both processes in tackling the debt problem; a potential benefit of blocking over flagging is that it could reduce industry debt levels to a greater extent as the gaining supplier would not have the option to continue with registering the customer if the customer has a debt. However the flagging process also leaves open the possibility for a follow up action. There was an assumption in the consultation paper that it would be a decision solely for the gaining supplier as to whether they have a policy to proceed with switches that have been flagged or cancel them. In practice, this could mean that one supplier could generally proceed with all flagged switches and another supplier could have the policy to cancel all flagged switches. There is also scope to develop transfer processes which facilitate the switch and address the debt issue. For example, in the N.I. gas market, the 'Retailer Code of Practice for Dealing with Customers in Debt wishing to Switch Supplier', requires that where a customer has been flagged, the gaining supplier must offer the customer at least one of the following options;

1. that the gaining supplier agrees to transfer the debt from the losing supplier and agrees repayment terms with the customer;
2. that the gaining supplier agrees to transfer the debt from the losing supplier and agrees the installation of a debt recovery meter as a means of recovering the debt from the customer.
3. the customer is requested to repay their outstanding debt to their losing supplier within three working days prior to the customer switch taking place.

If the customer does not agree to one of the options, the gaining supplier will cancel the change of supplier request.

In practice, option 3 may have the same effect as a debt blocking solution, similar to paying off the debt in order for the gaining supplier not to cancel the switch, if the customer is blocked, they could pay their debt to their current supplier immediately and re-request their chosen supplier to initiate the switching process.

With regard to option 1 and option 2 above, the implementation of a debt transfer facility would require further consultation with industry on the necessary arrangements between customers and suppliers. In the short term, given the number of customers in the market and the increasing levels of switching, the CER does not consider at this time that it is practical to require that suppliers should make the offer of debt transfer. The CER acknowledges the issues in this regard with relation to PPM as one respondent pointed out the majority of PPM are installed in order to recover debt. Therefore even where a debt has been flagged for a customer with a PPM, the gaining supplier would be happy to proceed with the switch given that for a PPM customer there would be minimal risk and cost to serve etc. However the CER does not consider it is necessary to implement additional arrangements for one segment of the domestic market but is open to reviewing this decision when it undertakes its review in late 2012.

(iii) Impact on the Supplier

With the blocking process, on receipt of a pending loss notification, the assessment of the level of debt happens within the losing suppliers internal systems and once the losing supplier blocks the customer, this initiates a cancellation of the change of supplier. With flagging, the same initial assessment of the level of debt is performed by the losing supplier, resulting in a flag rather than a cancellation, but there are additional requirements for the gaining supplier's systems to decide whether or not they wish to proceed with registering the flagged customer. Furthermore, if debt flagging were to be accompanied by debt transfer, further consideration would need to be given to any additional requirements needed to facilitate this both contractually and via the switching system. As discussed earlier, the debt transfer processes are outside the immediate scope of this decision.

(iv) Impact on the DSO

The CER has also considered the practicalities in terms of the extent of process and system changes which the DSO would be required to implement to facilitate either a debt blocking or debt flagging process and the associated timeframes.

The CER notes the planning and lead time associated with implementing changes to the central market systems to accommodate processes or process changes which are agreed by the industry. Any IT change requires time for planning and implementation. In order to implement any new automated process in the retail market systems, the impact and level of IT development required will depend on the nature of the change required e.g. some changes will be schema impacting, some will require new market messages and some can be catered for by the DSO at the backend systems within the current messaging frameworks. Sometimes manual solutions are possible but it is noted that this is not ideal in any business with high volume transactions. In developing this decision paper the CER has engaged with Bord Gáis Networks and ESB Networks in order to appreciate the type and extent of changes to both market systems which would

be required under the two options. The CER considers that the most appropriate solution for customers, and the industry, should be implemented, and this should not be unduly constrained by systems implications. However given the difficult economic circumstances, the severity of the previous winter and the consequential increase in energy demand, a pragmatic solution is being sought, ideally in advance of the winter period.

With regard to the gas systems, initial feedback from BGN has assessed whether a debt flagging or blocking solution could be delivered prior to the winter period. In order to achieve this, a solution requiring no changes to the central market systems would be necessary. BGN's initial assessment has highlighted that this would be possible with either a debt blocking or flagging process. These solutions will be on an interim basis before fully automated solutions incorporated into Gas MaP.

With regard to the electricity systems, the Retail Market Harmonisation Project is currently underway. This project will see the implementation of common market systems and messaging across the electricity markets in Ireland and Northern Ireland. ESNB has committed to the deliverables and timelines associated with this project and as such considers that any schema impacting change could not be accommodated until post Harmonisation – scheduled to complete in September 2012. ESNB has confirmed that the implementation of a block or flag would require some level of development and systems change and as such it would not be feasible to implement an automated solution until end 2012 or early 2013. However, ESNB has considered what could be done in the interim and indicated to the CER that a debt blocking or flagging process which is partly manual for both the suppliers and the Networks business could be delivered prior to the winter period. The CER notes that manual solutions mean added work and risk of error for both the DSO and suppliers. The rollout of additional prepayment meters in the electricity market from Q4 2011 will also be facilitated by manual solutions initially, which will add to the business process overhead for suppliers.

(v) Monitoring and Regulatory Oversight

When a customer is not satisfied with their engagement with a supplier on any issue, they have recourse to complain to the supplier in question and in the event that does not resolve the issue they can log a complaint with the CER. In the event that a customer initiates a change of supplier request and is flagged or blocked for reason of debt, the CER can investigate the circumstances of the complaints. The application of a block by the outgoing may be more straightforward in terms of dealing with a complaint as the supplier can demonstrate that they have applied the block within the industry agreed thresholds. With a flag, the gaining supplier has discretion on whether they accept a customer that has been flagged for debt. Although the CER expects that suppliers will apply internal validations consistently for all customers and

considers that both solutions can be accommodated in complaint handling processes.

Another aspect which the CER has considered in weighing the benefits of blocking and flagging is the ease of reporting. As noted elsewhere in this paper, the CER closely monitors statistics relating to the market processes. Automated processes facilitate easier monitoring so the final debt flagging solution will influence that outcome. The CER will use information from the central market systems in both markets to determine if the block or flag facility is being applied fairly by suppliers, and in line with agreed market procedures.

With a blocking solution, the chief metric would be the number of blocks (or cancellations) raised by suppliers. Similarly, the chief metric for the flagging solution would be the number of flags applied to customers account by suppliers, however this will not give a definitive view on the final outcome for the customer i.e. if a flag was raised did the gaining supplier act on that flag or accept the customer. While it may be more transparent to simply monitor the number of blocks issued by the losing supplier, rather than having to extrapolate the numbers of switches which proceeded or were cancelled by the gaining supplier after a flag was raised by the outgoing supplier, the CER considers that appropriate monitoring could be implemented to cater for either solution. The CER will use these statistics to inform its review of the debt flagging arrangements which will take place 12 months by October 2012.

(vi) Data Protection

The CER has previously consulted with the Data Protection Commissioner's office on the proposed flag/block solution. The key requirement for either solution is that the customer has given upfront consent for any information regarding debt to be passed between suppliers i.e. it would become a requirement of the switching process that suppliers capture the customer's permission, at the point of sign up, for this information to be passed between suppliers. The specific details of an industry agreed process will be set down in an industry code.

In the case of a flag the gaining supplier will be made aware that the customer has a debt above the industry agreed threshold by way of the flag on the market message. In the case of the block, the issuance of a cancellation message by an existing supplier will be a de-facto communication that this customer is in debt above the industry threshold.

On balance, having considered the issues raised in (i) - (vi) above the CER considers that flagging is the most appropriate solution for the gas and electricity markets at this time, given that it meets the needs of the industry and can be implemented in a non discriminatory manner that upholds the customer's rights and affords suitable customer protection.

3.1.2 Exclusion of Electricity LEU's and Gas DM/LDM

Consultation Question 2: Respondents are invited to comment on; 1) the proposal to allow debt blocking/flagging for small and medium sized businesses in the electricity market as well as all Non Daily Metered (NDM) business customers in the natural gas market. Are you in favour of this proposal. 2) the proposal not to allow debt blocking/notification for LEUs or DM/LDM in the gas market? Outline reasons for your agreement or disagreement.

Respondents' Comments

Three respondents noted that they were in agreement with the proposal to exclude electricity LEUs and above DM in the gas market. While two of these respondents noted their view that debt hopping is not as prominent in these markets, one of these respondents however noted that there may be complexities in differentiating the LEUs in practice. Conversely, five respondents noted their disagreement with this proposal in line with the following reasoning;

- To exclude larger customers would be discriminatory.
- Larger customers incur greater debt; gaining suppliers should be made aware of this. To exclude would increase costs to all customers.
- Do not understand why CER would leave the debt hopping loophole open for larger customers – the only beneficiaries to this would be the legal profession & third party consultants hired for customer supplier arbitration.

Finally, one of the respondent suggested that the majority of LEU and DM customers should be included up to the point where supply contracts are complex and customer demand by single site is material.

CER's Response to Comments Received

The CER maintains its position that it would not be appropriate to include LEU's in the electricity market and DM and above in the gas market in the debt blocking arrangements. The CER agrees that such customers would incur very large bills and in this regard it would be more appropriate that supplier's conditions around risk would be best placed in their individual contracts with these large customers. The CER further notes that customers of such size usually have account managers within their suppliers in addition to their bespoke contracts and as such warrant to be treated differently than domestics and smaller business given that the arrangements around same are substantially different. The CER believes that given the size and value of the consumption of LEUs and DM and LDM customers, were one of these customers to default on their contract that it would be appropriate that this is dealt with in the commercial courts as opposed to by a mechanism implemented to tackle issues which are more prominently associated with domestic and small and medium business users.

The CER considers that while the same principles of the market model should be afforded to small and medium sized business customers as well as domestic, large energy customers in both the electricity and gas markets should be excluded from the debt flagging process. Suppliers have raised the issue that for a majority of customers who default and debt hop, it often does make commercial sense to pursue them through the available legal means given the scale of the debt involved relative to the potential cost/resource implications of a court proceeding. However, the CER would maintain that large energy customers do not meet the criteria for a debt hopping solution on grounds of customer or supplier protection and as such should be pursued for breach of contract through the established channels. It should be noted that a supplier is entitled to pursue any customer that is in breach of its contractual commitments.

3.1.3 Contract Default

Consultation Question 3: Respondents are asked to comment on the proposed grounds for raising an objection or flag; 1) Do you consider that it is appropriate to raise an objection or flag on the grounds of contract default? Is it appropriate for this provision to apply to both business and domestic customers?

Respondents' Comments

Six respondents indicated that they were in favour of blocking or flagging on the basis of contract default. Three of these six respondents indicated that this would be appropriate for the business markets only with the remaining three respondents indicating that it should also be applied in the domestic markets if fixed term contract breaking is or becomes an issue in this market also.

A further two submissions referenced this question, one noting that it did not agree with blocking or flagging on the basis of contract default in line with the rationale that procedures for this should be set out in the contract itself and the other while not providing a view on the question in relation to business markets noted their contention that blocking/flagging for contract default is not appropriate for the domestic markets.

Additionally a respondent proposed further grounds on which a block could be raised. This suggestion was that suppliers could also raise an objection on grounds of non settlement of debt after completion (up to five weeks later suggested) of a supplier switch i.e. for non payment of final bill. If this was to occur the switch could be reversed and the customer reverted to their losing supplier.

CER's Response to Comments Received

The CER is of the view that contract default should not be grounds on which suppliers can debt flag for domestic customers. The CER is of this view given that in most cases contracts offered to domestic customers are generally not of a fixed term, furthermore, the CER would have concerns over blocking domestic customers, particularly vulnerable ones who have no outstanding debt into paying a higher tariff if they could avail of a better offer or more suitable tariff with another supplier.

The CER agrees that it may be appropriate for suppliers to raise a flag for their business customers on the grounds of contract default. However, the CER does not agree that a flag should be raised for contract default at this time, but this issue will be kept open for review.

The CER does not agree with the suggestion from one respondent that switches could be reversed where a customer does not pay their closing bill. The CER believes that cancellations of the switching request for erroneous transfer or debt should only be possible up to the point that the customer is actually switched. The CER notes the problems which have resulted from the recent practice in both markets of some suppliers raising high numbers of correction requests to switch back customers who have been erroneously transferred or changed their mind after the switch has completed. The CER thus considers that it may be sensible to incorporate the relevant cooling off periods into the delay time needed for the losing supplier to raise a flag.

3.1.4 Thresholds & Timings

Consultation Question 3.2: Do you consider that the proposed debt thresholds and timings in section b of the consultation 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 a criteria to raise a debt block or flag?

With regard to the proposed thresholds and timings for business and domestic customers set out in section 3.3.2 (b) of the consultation paper, namely;

A debt block or flag could be raised;

- 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

Respondents' Comments

With regard to these thresholds and timings outlined above, four respondents were in agreement, five respondents were not in agreement and two respondents noted that they were partially in agreement. A further respondent noted that it did not wish to comment on the proposal specifically and warned that discussions regarding debt thresholds could give the message to consumers that 'accepted' levels of debt hopping are tolerated.

Those submissions which were in agreement with the consultation proposals noted that they appeared broadly in line with average consumption for the billing periods of the relevant customer type.

Of the seven submissions which were not fully in agreement, the following are the alternative suggestions and reasons for non agreement.

1. Agree with thresholds but the timing should be 28days for domestic as well as business as this would be a breach of standard credit terms.
2. Agree with thresholds but the timings are too long, propose 7 days for both business & domestic.
3. For small & medium sized businesses the threshold should be €250 after it remains unpaid 28days after it falls due, for domestic the threshold should be €100 which remains unpaid 28days after it falls through. The proposal threshold is too high and timing is too long.
4. Do not agree with thresholds or timings, a flag should be raised for any customer who has not paid a bill by its due date.
5. Do not agree with monetary amount, threshold should be €250 for all customer types, believe the timing should be 28days for both business and domestic.
6. The thresholds proposed are arbitrary amounts which fail to take account of individual circumstances such as businesses who only operate in summer.

Finally, another respondent suggested that for domestic customers, there should be flagging and blocking for different levels of arrears. This respondent suggested that it should be flagged to suppliers where a customer's bill plus any arrears amounts to €200 or over for electricity or €250 or over for gas. Additionally, this submission suggested that a customer should be blocked from changing supplier where there are unpaid arrears over two or more billing periods (four months) amounting to €200 for electricity and €300 for gas which is over the amount of the current bill. Conversely three submissions expressly noted that the monetary amount should be the same for electricity and gas.

Two submissions suggested that it would be important to review the monetary thresholds on a regular basis to account for energy price changes.

CER's Response to Comments Received

Taking on board the comments received, the CER has decided that it is necessary that there is both a monetary and time threshold for both the business and domestic grounds to flag.

The CER wishes to strike a balance between the interests of the consumer and the supplier and believes that €200 may in fact be a little restrictive whilst also ensuring that large debts are not accumulated in this way. The CER has therefore decided to increase the limit to €250 for domestic customers.

With regard to business customers, the CER has noted the comments from suppliers that it may be preferable to have one threshold i.e. €500 for all business customers as opposed to two, i.e. €500 for small business and €1500 for medium business. The CER, however, notes that the electricity and gas consumption across these business categories varies to a large degree and hence the potential debt which could be accrued, by for example a single outstanding bill can. As such the CER deems it appropriate to have different thresholds for both small and medium businesses. The CER is also proposing to increase the thresholds for these categories over those indicated in the consultation paper to provide further flexibility for variation in customer size. The threshold for small business customers will be €750. As to the thresholds for the medium size businesses, given the particularly large variance in consumption across this customer category, the CER will give further consideration to the debt threshold, and issue a decision prior to implementation. .

The CER does however; see merit in the concerns raised by a number of respondents that the 56 day threshold (from the date on which payment fell due) might be too long. Given that suppliers usually allow two weeks from bill issue for payment to be due, this would mean that a flag could not be raised until approx 10 weeks after the bill has been issued. Concurrently, the CER is also cognisant that some customers spread the payment of the bill across a number of weeks after it is issued i.e. pay the current bill in instalments up until the next bill is received. In this regard, the CER does not wish to prevent customers who have been facilitated by suppliers in this way.

The thresholds for the application of a debt flag will be set as follows;

	Customer Category	Debt Value & Duration Threshold
Domestic	Electricity/Gas	≥ €250 for >42 days
Small Business	Electricity (LV-NonMD/DG5) Gas (NDM <73MWh)	≥ €750 for >42 days ≥€750 for > 42 days
Medium Sized Business	Electricity (LVMD/DG6) Gas (>73MWh NDM <5.5 GWh)	≥€ to be determined for > 42 days
Large Energy Users	Electricity (DG7-10, TCons) Gas (DM & LDM)	n/a n/a

The thresholds show an increasing level of debt for domestic, small and medium business customers to reflect the relative size of the bills incurred by each party. There is also a timing factor which recognises the duration the bill is outstanding. The CER has decided that for all eligible customer categories the time outstanding is 42 days after payment has fallen due, (there is typically a 14 day credit period plus a 42 days grace period resulting in a flag being applicable two months/8 weeks from the date the bill is issued. The time threshold of 42 days after the payment has fallen due allows adequate time for customers to manage the payment of their bills whilst also not being so long that the process is not effective.

The CER sees merit in one respondent's suggestion that customers should be flagged at one level of arrears and blocked at a higher level of arrears. However, the CER is of the view that while this would be useful, it would add additional complexities in terms of implementation and monitoring.

The CER agrees with the suggestion that the thresholds should be reviewed from time to time. The CER reminds at this point that the flagging process will be reviewed by October 2012. The CER will have regard to the statistics it has been monitoring over this period and any issues which have arisen in this time when reviewing whether the flagging facility should be altered or if necessary removed.

Consultation Question 3.3: Do you consider that it is necessary as outlined in section c of the consultation paper to allow for objections or flags to be raised for business customers for sums below the threshold where debt has remained unpaid for a longer period of time?

Section 3.3.2 (c) of the consultation paper noted that the CER was minded to allow that a block or flag could be raised for business customers where a sum of money below the normal threshold remain unpaid 56 days after it has fallen due. The following lower thresholds were set out for consideration;

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

Respondents' Comments

Three respondents indicated that they were not supportive of this provision with one particular respondent noting its view that were a business to owe arrears below the thresholds proposed for longer than a single period before a change of shipper takes place that this is indicative of customer dissatisfaction with the supplier rather than a debt issue.

Four respondents indicated that they were supportive of this provision in principle but suggested some alternations to the thresholds and timings in this regard;

- Given the seasonal nature of gas consumption, the time limit should be pushed from 56 days to 180 days.
- Agree given the summer differential for gas, but believe 56 days is too long and should be where owed > 14 days.
- This provision should also apply for domestic customers;
 - For businesses, suggest where debts between €50-250 which are outstanding for > 180 days.
 - For domestic, suggest where debts > €50 are outstanding > 180 days.
- This provision should also apply for domestics; for both business and domestic the timeframe should be where lower debt is owed > 180 days.

CER's Response to Comments Received

The CER notes the comments from respondents on regarding a provision for business customers to be flagged where they owe greater than €50 and less than the industry threshold for longer than 180 days after it has fallen due. The CER will give further consideration to the debt threshold, and issue a decision prior to implementation

As per the comments in the preceding section, the CER does not believe that this condition is necessary for domestic customers.

3.1.5 Data Protection

Consultation Question 4: Respondents are invited to comment on the means of acquiring customer agreement to the information on debt being passed to a third party.

Respondents' Comments

Seven respondents indicated their view that upfront agreement from the customer could be obtained at the point of sign up and six of these suggested that this could be best done by incorporating a relevant provision in the supplier terms and conditions. Three submissions noted that as a debt blocking process is operational in both the U.K. and N.I. that it will be possible for data protection issues to be overcome.

Three submissions noted that this provision would have to be operated on an 'opt out' basis as the process would be ineffective if the customer had to 'opt in' for their debt information to be shared. These respondents noted that were a customer to opt out of having their debt information passed on that the supplier could use its judgement as to whether it wanted to proceed with taking the customer.

Two respondents stated that data protection liability lies with suppliers and thus it should be left to market participants to develop a data protection compliant process. Three respondents further noted that the data protection requirements are unclear and further investigation into them needs to be undertaken. One submission suggested that a working group between supplier, the CER and the Office of the Data Protection Commissioner is established to develop a clear and compliant protocol.

CER's Response to Comments Received

The CER reiterates its standpoint that the detailed procedures agreed to implement the debt blocking process must be signed off as data protection compliant before the CER will approve it becoming operational in the market. The CER agrees with the respondents' comments that the responsibility for data protection ultimately lies with suppliers; however as the authority which approves all market processes and procedures, the CER has a duty to require that data protection stipulations are proven to be satisfied before approving the systemisation of such a process.

However, given that similar forms of debt management processes are in place in Northern Ireland and GB the CER is of the view that it will be possible to develop procedures which are compatible with the relevant data protection legislation. In forming this view, the CER is cognisant of previous high level advice provided by the Office of the Data Protection Commissioner which noted that any process should be compliant where the customer is informed as to if and what exact personal information will be shared before they agree to sign up.

The CER agrees with the views of a number of respondents that it will be necessary to have further contact with the Office of the Data Protection Commissioner when devising the details of the debt blocking process. As noted previously in the paper, while this decision paper sets out the intention for a debt flagging in principle, the development of the detailed procedures in this regard will need to be agreed at the market forums i.e. the GMARG in gas and the IGG in electricity. The CER will liaise with the Data Protection Commissioner's office when clarifications are required in the development of the finer details of the procedure.

3.1.6 Impact on Competition

Consultation Question 5: What do you consider would be the impact on competition of a debt blocking or debt flagging solution?

Nine respondents indicated their belief that such a solution would not impact competition negatively but would instead improve competition given that a) debts will be reduced, and hence industry costs and customer tariffs will be lower and b) will encourage market entry as supplier risk & uncertainty will be reduced.

One further respondent noted its view that blocking would deter market entry but that flagging would have a positive effect on competition. In particular, one submission noted that CER had been too preoccupied with facilitating switching without given adequate consideration of its implications such as the incentive switching creates to avoid the consequences of built up arrears. Furthermore, another submission stated switching rates are not reflective of real competition where customers are using switching as a vessel to avoid disconnection & arrears. Lastly, one respondent noted their contention that current competition is not real competition and that debt blocking or flagging would only serve to protect suppliers who engage in poor practices.

CER's Response to Comments Received

As noted in the section of this paper outlining the pros and cons of introducing a debt blocking/flagging process, the CER agrees that in the current economic climate where customers are increasingly experiencing difficulty paying their utilities that a debt blocking/flagging facility will go some way to reduce the levels of bad debt that are arising in the industry. The CER consequently acknowledges that reduced bad debt levels would be conducive towards suppliers being able to offer lower tariffs. The CER agrees in principle that the reduction in the risks associated with bad debt would be a factor which could encourage market entry into the gas and electricity markets by additional retail suppliers and in line with this rationale does not share one respondent's view that blocking would pose a barrier to entry for new suppliers.

The CER does not agree with the suggestion that it has been preoccupied with increasing customer switching levels to the detriment of some customers. The CER takes its responsibilities with regard to customer protection very seriously. In this regard the CER has consulted and implemented a large number of policies and code of practices to ensure that customers, especially those who are vulnerable are protected in their dealing with energy market participants. Furthermore, the CER notes that it has published a decision paper with regard to Customer Protection in the Deregulated Electricity Market which seeks to ensure that customers continue to be protected post deregulation. The CER does agree however that debt is more difficult for a customer to manage where it exists with a number of suppliers rather than one, and thus hopes that debt flagging will stop incidences of customers accruing multiple arrears with various suppliers in the market in the short run.

The CER does see merit in the view expressed by a respondent that switching is not a true reflection of competition where a customer's motivation to switch is not driven by the desire to acquire a better deal but solely to avoid being disconnected. The CER does however believe that it is positive that customers who have difficulty paying bills obtain the benefits of competition through cheaper tariffs whatever their motivation is to switch.

3.1.7 Debt Transfer

Consultation Question 6: What are your views on allowing customer debts to be transferred between suppliers?

Respondents' Comments

Three respondents noted that there were not in favour of debt transfer on the basis that it is not commercially beneficial for a supplier to act as a recovery agent for another supplier and because this could potentially distort effective price competition. Five respondents noted that they were ok with debt transfer in principle provided that a supplier is not obliged to take on a customer debt and provided that each supplier could agree the terms bilaterally with the losing supplier if they did wish to take on a debt. One of these respondents noted that they would be supportive on the condition that benefits of facilitating debt transfer outweighed the costs. One of these submissions did however warn that such a provision could entail practical issues as it would require a matrix of collection and payment agreements between suppliers & that this could develop into a barrier to entry.

One supplier warned against a second wave of debt hopping occurring with the Government's proposals re the 'Pay As You Save' scheme. This respondent suggested that the credit for these schemes should not be provided by suppliers but instead by a 'Green Bank' and that suppliers could recoup money on behalf of the Green Bank.

CER's Response to Comments Received

As alluded to by some respondents implementing a debt transfer facility may be complex in terms of customer to supplier and supplier to supplier agreements. Furthermore, the tone put forward by the majority of respondents is that suppliers do not have an appetite to collect debts on behalf of other suppliers and thus the CER expects that such a facility would not be utilised by suppliers if it was put in place. Ofgem, the GB energy regulator has previously indicated to the CER that the Debt Assignment Protocol for prepayment meter customers in the U.K. is not widely used. In light of the above the CER has decided that debt transfer will not be facilitated as part of the debt blocking solution at this time, but will be considered as part of the 12 month review.

With regard to the respondent's comment about the Pay As You Save scheme, the CER acknowledges this point but as iterated in the consultation paper this scheme is considered as part of the current consultation. The CER notes that the administration of the scheme will be a matter for the Government.

3.1.8 Industry Code

Consultation Question 7: Respondents are invited to comment on the proposal to introduce a Code of Practice for a debt blocking or flagging process.

Respondents' Comments

All respondents who provided comment in relation to this question indicated that there were in favour of a Code of Practice. Five of these respondents further suggested that CER should actively monitor supplier's compliance with this code and a number of these submissions noted that CER should take actions such as fines against suppliers who were found to be abusing the process. Additionally two respondents suggested that clauses should be included in suppliers' Licences to protect against suppliers abusing the process which is introduced.

One supplier suggested that a Code of Practice would be required for blocking but would not be necessary for flagging; however a Debt Assignment Protocol would be required for the PPM sector of the market like in the U.K. if flagging was introduced. While one respondent outlined their view that a blocking or flagging process would only be abused if the process introduced was not robust enough, another respondent suggested that no industry process would be fool proof to attempts of fraud.

Finally one respondent noted that CER should run a meaningful campaign to inform customers of their rights to switch. Additionally this respondent stated that arrangements should be put in place to ensure that customer do not move to a higher or more unsuitable tariff when they do switch.

CER's Response to Comments Received

Customer protection is paramount with regard to setting all energy market policies and procedures. Thus, similar to the condition that data protection requirements are satisfied before debt flagging becomes operational; the CER will require that a robust industry code is put in place to ensure that customers are adequately protected. The CER is reassured by the fact that the majority of respondents have indicated their agreement to this. In tandem with the detailed arrangements of the process being developed at the markets forums, the CER will work with industry over the coming months to develop an industry code on debt flagging as part of the set of process documentation. This code will set out the details of how the process will work in practice and will include details such as the number of days the losing supplier will have to raise a flag after being notified of a change of supplier request, the actions the gaining supplier must take after they are notified of the flag and also the supplier reporting arrangements to the CER. The code will consider the implications for the dual fuel market where a customer may be in debt for one utility but not the other i.e. flags cannot be raised to block an electricity switch when the customer has hit debt thresholds in and vice versa. The communication of debt information

between one supplier and another constitutes the passing of personal information and therefore an industry code will also set down the requirements around customer permission, so that the flag process is compliant with Data Protection legislation. At present no further consideration will be given to the concept of a debt re-assignment protocol.

The CER will 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 which proposes 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. The provisions of the 3rd Package require the CER take action where it finds that customers are not benefiting from competition.

The CER also intends to monitor the number of customers by supplier which are flagged on a monthly basis. In this regard it is intended that the CER will track the number of flags raised and potentially also the number of change of suppliers which occur on sites which had previously been flagged. As per the policy with regard to disconnections, suppliers must maintain an auditable record that the grounds for raising a block for each customer is line with the CER approved rationale. The CER will conduct spot check suppliers' compliance with this.

The CER will treat any reports of any misuse or abuse of the process by industry participants as serious and will conduct investigations into all such reports.

3.1.9 Prepayment Metering

Additional Views: Prepayment Metering
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A number of respondents commented on prepayment metering (PPM) in both the electricity and gas markets with regard to a) CER PPM policy in general and also b) additional considerations which need to be given to the PPM market if a debt blocking or flagging process was introduced.

Four respondents indicated their belief that PPM should be further utilised and rolled out as a measure which in conjunction with blocking or flagging would assist customers who are having difficulty paying and also improve the debt situation in the industry. It was the view of one respondent that customer don't debt hop to avoid their debt but do so to avoid disconnection, and thus with greater availability of PPM, disconnection & debt hopping could be reduced.

With regard to the relationship between debt blocking/flagging and PPM, one respondent stated its view that debt flagging could only be introduced into the

PPM markets if a solution such as the Debt Assignment Protocol (DAP) as operated in the U.K. accompanies it. This respondent noted that PPM are usually only installed as a last resort measure to help people pay their debt and avoid disconnection, if a DAP was not in operation a gaining supplier would have no incentive not to take on a customer as for the gaining supplier there would be no debt, minimal cost to serve and no risk associate with this PPM customer.

A number of respondents noted that CER should progress the roll out of an enduring PPM solution in the electricity market as a priority. Two respondents commented on the technicalities of the PPM solution which is in use in the gas market. One of these respondents noted that the debt functionality on the gas PPM should be turned on (currently PPM debt is recovered not on the meter but via debt recovery tariffs) and that this would enable the U.K. D.A.P to be used here. The other respondent made a similar comment in noting that there could be a moratorium on PPM customers changing supplier for a period of time such as one year, within which functionality could be interrogated into the overall PPM solution to manage debt collection & transfer on meter in event of change of supplier. Two respondents further noted that the smart metering work streams should be progressed with the aforementioned debt issues in mind.

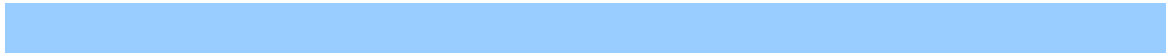
CER's Response to Comments Received

With regard to the respondents comments regarding the general availability of PPM; the CER notes that in the gas market there is a full PPM solution established in the market. The CER notes however that while this PPM solution is set up so that it can be utilised by all suppliers in the market, that Bord Gáis Energy is the only supplier who service gas customers with PPM at this time. The CER also notes that there are additional requirements for suppliers to have set up such as additional billing system requirements in order to service the PPM market. In recognition of this, the CER has previously allowed additional time for Airtricity, Flogas and Electric Ireland to get these additional requirements in order before entering this segment of the domestic market. The CER is now of the view that these suppliers should not be granted anymore additional time to fulfil these requirements and so intends writing to these suppliers to request that they begin taking the necessary steps which will enable them to supply to PPM gas customers as soon as possible. The CER would have an expectation of 1st October 2011 in this regard.

The implementation of a keypad meter solution for the electricity market is currently being progressed with industry which will see the deployment of keypad meters in Q4 2011.

The CER notes the comments that a Debt Assignment Protocol is operated in the UK for PPM customers with a debt flagging process. At present no further consideration will be given to the concept of a debt re-assignment protocol.

With regard to the comments that in the gas market the debt should be recorded by the meter as opposed to being recovered by debt recovery tariffs as is currently the case; the CER agrees that this may be a more appropriate solution where there multiple suppliers operating the PPM segment of the domestic market and thus accordingly will consider these changes through the gas market forum.



4.0 CER Decision

4.1 CER's Decision

The CER, whilst acknowledging its reservations about having a change of supplier objections process in principle, is of the view that the introduction of same is warranted given the unprecedented economic difficulties facing both customers and suppliers in the Irish energy market.

4.1.1 Blocking or Flagging

The CER has considered the pros and cons of both a debt blocking and debt flagging process and has had regard for respondents' views and suggestions around the two suggested options.

The CER has considered the merits of both the flag and block options and concluded that the flag is more consistent with the open market design that exists for both gas and electricity retail markets. Both markets operate on a supplier centric model that sees the customer as the initiator in any switch. The retail market model is structured so that customers deal exclusively with the gaining supplier of their choice, and the processes have been designed to ensure that the losing supplier does not have any inappropriate powers to veto or delay a customer switch. The implementation of a block by a losing supplier runs contrary to this principle and would potentially act as a barrier to market entry; as such the CER does not consider it to appropriate solution for a developing competitive market. A flagging process may also be easier to implement and can facilitate the required level of monitoring, audit and control.

Further to careful consideration of the options and the respondents' views and suggestions, the CER has decided to approve the implementation of a debt flagging facility into the change of supplier processes for both domestic and small/medium businesses in the electricity and gas markets. Large energy users are not currently eligible for this process.

Decision No.1

The CER has decided that a debt flagging facility for the losing supplier will be incorporated into the change of supplier process in both the electricity and gas domestic, small and medium sized business markets. This facility will not apply to LEUs; DG 7-10 & TCon (transmission connected) customers in the electricity market and DM and LDM customers in the gas market.

4.1.2 Grounds to Raise a Block

The implementation of a flag facilitates the customer choice but empowers the gaining supplier to make a commercial decision about whether they will take on a customer with existing arrears. This measure supports suppliers in undertaking appropriate risk assessment as part of the customer acquisition process. The CER is of the view that the flag will restrict the practice of deliberate debt hopping by customers, providing an appropriate incentive for customers to address their arrears with the existing supplier and increased protection for suppliers. The thresholds for the application of a debt flag will be set as follows;

	Customer Category	Debt Value & Duration Threshold
Domestic	Electricity/Gas	≥ €250 for >42 days
Small Business	Electricity (LV-NonMD/DG5) Gas (NDM <73MWh)	≥ €750 for >42 days ≥€750 for > 42 days
Medium Sized Business	Electricity (LVMD/DG6) Gas (>73MWh NDM <5.5 GWh)	≥ €to be determined for > 42 days
Large Energy Users	Electricity (DG7-10, TCons) Gas (DM & LDM)	n/a n/a

The thresholds show an increasing level of debt for domestic, small and medium business customers to reflect the relative size of the bills incurred by each party. There is also a timing factor which recognises the duration the bill is outstanding. The CER has decided that for all eligible customer categories the time outstanding is 42 days, which reflects a typical 14 day credit period plus a 42 days grace period resulting in a flag being applicable two months from the date the bill falls due. The CER does not propose to allow for a flag to be raised in the event of contract default at this time, although this decision will be kept under review.

Decision No.2

The CER has decided that the following thresholds for debt flagging will apply;

Domestic	Electricity/Gas	≥ €250 for > 42 days
Small Business	Electricity/Gas	≥ €750 for > 42 days
Medium Sized Business	Electricity/Gas	≥€ to be determined for > 42 days
Large Energy Users	Electricity/Gas	n/a

The CER does not propose to allow for a flag to be raised in the event of contract default at this time, although this decision will be kept under review.

4.1.3 Implementation

The details of how the flagging facility will be incorporated in the market messaging systems in both markets will be progressed by the industry forums i.e. the GMARG (Gas Market Arrangements Retail Group) and the IGG (Industry Governance Group). While the supplier centric market design is similar for both markets, the detailed retail market processes do vary and as such may present different implementation challenges. The CER notes that any IT change requires time for planning and implementation and in order to implement any new automated process in the retail market systems, the impact and level of IT development required will depend on the nature of the change required e.g. some changes will be schema impacting, some will require new market messages and some can be catered for by the DSO at the backend systems within the current messaging frameworks. Therefore sufficient time must be allocated to the development and delivery of such a solution. The CER also notes that in the electricity market, there are existing commitments regarding the delivery of the Retail Market Harmonisation Project which will preclude any development in 2011.

An automated solution to facilitate debt flagging, as outlined above, is required to be implemented by the DSOs no later than 1st January 2013. However, given the need for an industry solution to this issue in the short term, an interim manual solution to facilitate debt flagging, as outlined above, is required to be implemented by the DSOs no later than 1st October 2011.

Decision No.3

The CER has decided that an automated solution to facilitate debt flagging should be implemented for both the gas and electricity retail markets no later than **1st January 2013**.

Given the need for an industry solution to this issue in the short term, an interim manual solution to facilitate debt flagging, is required to be implemented by the DSOs and suppliers no later than **1st October 2011**.

4.1.4 Industry Code

The CER will work with industry over the coming months to develop an industry code on debt flagging as part of the set of process documentation. This code will set out the details of how the process will work in practice and will include details such as the number of days the losing supplier will have to raise a flag after being notified of a change of supplier request, the actions the gaining supplier must take after they are notified of the flag and also the supplier reporting arrangements to the CER. The code will consider the implications for the dual fuel market where a customer may be in debt for one utility but not the other i.e. flags cannot be raised to block an electricity switch when the customer has hit

debt thresholds in and vice versa. The communication of debt information between one supplier and another constitutes the passing of personal information and therefore an industry code will also set down the requirements around customer permission, so that the flag process is compliant with Data Protection legislation. At present no further consideration will be given to the concept of a debt re-assignment protocol.

Decision No.4

The CER has decided to develop an industry code on debt flagging as part of the set of process documentation. The CER will work with industry over the coming months to develop an industry code on debt flagging as part of the set of process documentation.

4.1.5 Monitoring & Review

The CER will 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 which proposes 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. The provisions of the 3rd Package require the CER take action where it finds that customers are not benefiting from competition.

The CER expects that the implementation of a debt flagging process will serve the industry and consumers to reduce incidences of debt hopping. However, the implementation and efficacy of the processes and code outlined above will be subject to ongoing monitoring by the CER and a 12 month review in Oct 2012.

Decision No.5

The CER has decided to review the implementation and efficacy of the processes and code outlined above will be subject to ongoing monitoring by the CER and a 12 month review in Oct 2012.

5.0 Conclusions and Next Steps

The CER will commence work with the electricity and gas industry to implement the decisions set out in Section 4 in July 2011. The full list of decision is outlined in Annex I.

In conjunction with this, with regard to the I.T. considerations regarding how the process will be systemised and operated manually where necessary, these details will be progressed at the electricity and gas markets forum.

Annex I – List of Decisions

Decision No.1

The CER has decided that a debt flagging facility for the losing supplier will be incorporated into the change of supplier process in both the electricity and gas domestic, small and medium sized business markets. This facility will not apply to LEUs; DG 7-10 & TCon customers in the electricity market and DM and LDM customers in the gas market.

Decision No.2

The CER has decided that the following thresholds for debt flagging will apply;

Domestic	Electricity/Gas	≥ €250 for > 42 days
Small Business	Electricity/Gas	≥ €750 for > 42 days
Medium Sized Business	Electricity/Gas	
≥€ to be determined for > 42 days		
Large Energy Users	Electricity/Gas	n/a

The CER does not propose to allow for a flag to be raised in the event of contract default at this time, although this decision will be kept under review.

Decision No.3

The CER has decided that an automated solution to facilitate debt flagging should be implemented for both the gas and electricity retail markets no later than **1st January 2013**.

Given the need for an industry solution to this issue in the short term, an interim manual solution to facilitate debt flagging, is required to be implemented by the DSOs no later than **1st October 2011**.

Decision No.4

The CER has decided to develop an industry code on debt flagging as part of the set of process documentation. The CER will work with industry over the coming months to develop an industry code on debt flagging as part of the set of process documentation.

Decision No.5

The CER has decided to review the implementation and efficacy of the processes and code outlined above will be subject to ongoing monitoring by the CER and a 12 month review in Oct 2012.