Review of Non Daily Metered Retail Gas Market

DOCUMENT TYPE:	**Consultation Paper**
REFERENCE:	**CER12/164**
DATE PUBLISHED:	05 October 2012
CLOSING DATE:	16 November 2012
RESPONSES TO:	skeating@cer.ie

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CER – Information Page

Abstract:

The Commission for Energy Regulation (CER) is consulting on the level of competition in the retail gas market and the circumstances under which the revenue and price controls should be removed from Bord Gáis Energy in the retail Non-Daily Metered sector.

Target Audience:

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

Related Documents:

- CER/10/212: Consultation Paper - Proposals on a Roadmap for Deregulation in the Non-Daily Metered Retail Gas Market.
- CER/11/071: Decision Paper - Roadmap for Deregulation in the Non-Daily Metered Retail Gas market

Responses to this consultation should be returned by email, post or fax and marked for the attention of skeating@cer.ie at the CER**.**

The CER intends to publish all submissions received. Respondents who do not wish part of their submission to be published should mark this area clearly and separately or enclose it in an Appendix, stating the rationale for not publishing this part of their comments.

Executive Summary

In November 2010, the CER published the consultation paper entitled *"Proposals on a Roadmap for Deregulation in the Non-Daily Metered Retail Gas Market"*. The CER published its Decision on the Roadmap on 7th June 2011. This Decision outlined the characteristics which would define a competitive market in the retail Non-Daily Metered (NDM) gas sector and which would trigger the removal of *ex ante* revenue and price controls from BG Energy.

The objective of this consultation is to consider whether the methodology and findings as set out in the Roadmap are still valid. The CER seeks the view of the public and the CER's stakeholders with regard to the development of competition in the domestic retail gas market, and the impact this has on regulatory options.

In reviewing the definition of the relevant product and geographic market, the CER's preliminary conclusion is that the Roadmap finding should be maintained, such that there is a relevant product market for the supply of retail NDM gas services. The retail NDM gas market is national in geographic scope. The CER does not find that there is a distinct dual fuel market, but in recognition of the potential significance of dual fuel offerings, considers the issue in terms of competitive constraint.

There are now four suppliers actively competing in the NDM retail gas market. These are Airtricity, BG Energy, Electric Ireland, and Flogas. BG Energy is the incumbent supplier and the other companies now supply 30% of the total market of 628,500 retail gas customers (end Q2 2012 figures). Flogas entered the domestic market in 2004 and Airtricity in 2010. Electric Ireland entered the residential gas market in 2011. Flogas supplies only gas; the other three suppliers offer both gas and electricity.

At end Q2 2012, BG Energy's share of the retail NDM gas market was 70%. While BG Energy's share has been steadily declining, it remains at a level which is presumptive of dominance. The CER has assessed a number of other factors which could potentially mitigate market power, and has considered particularly whether wholesale market liquidity, economies of scale and scope, customer switching, dual fuel offers and branding may impact on market power. The CER's preliminary conclusion is that dual fuel supply could potentially constrain BG Energy's market power to some extent, but that none of the other factors is sufficiently strong to counter BG Energy's position of dominance in the retail NDM gas market, and that BG Energy remains in a position of market power where it has the ability and incentive to exert that market power to the detriment of consumers and competition.

The finding of market power justifies the continuation of *ex ante* controls on the market. The CER has reviewed its proposed criteria which define a competitive market, and has also reviewed its regulatory options. The CER proposes that, for the retail NDM gas market to be considered competitive, the following conditions would all need to be met:

- At least three suppliers, of which two are independent
- Each independent supplier market share is in excess of 10%
- Customer switching rates in excess of 10% per year.

In addition, a level should be set for BG Energy's market share. The Roadmap stated that the market share threshold for tariff deregulation would be 60% or lower but related this level to the significance of the BG Energy brand, concluding that a change in the retail brand would be a mitigating factor in reducing BG Energy's market power. The CER particularly requests feedback on its revised assessment of the significance of the brand and how it should be factored into the decision on the market share threshold. If the brand is not considered to confer a competitive advantage, and BG Energy retains its retail brand, then the market share threshold for deregulation must be reflective of BG Energy's position of dominance in the gas market. In such circumstances the market may not be considered competitive until BG Energy's market share is *circa* 50-55% or less. If, however, the brand is seen as conferring an advantage and the retail brand is changed in recognition of this, then an appropriate level may be closer to 60%.

The CER has concluded that some form of *ex ante* price control remains necessary. It has reviewed the current price control, and considered a number of regulatory options. The current price control could be maintained; a modified price control could be introduced; or dual fuel competitive constraints could be directly addressed, possibly by non-price means. The eventual choice of option depends on the conclusions of the competition assessment, and particularly on the extent to which dual fuel offers are seen as constraining BG Energy's market power in the residential gas market.

The CER has a duty under the Third Package to monitor the level and effectiveness of market opening and competition at both wholesale and retail levels. The CER is required to implement appropriate measures on foot of the monitoring in order to prevent a distortion or restriction of competition in the supply of gas to final customers and to ensure that final customers are benefiting from competition in the supply of gas. The CER will continue to monitor market trends on a quarterly basis, and believes that this will avoid regulatory overshoot and allow a rapid regulatory response to any changes in market conditions.

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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, while the *Energy (Miscellaneous Provisions) Act 2006* granted the CER powers to regulate electrical contractors with respect to safety, to regulate natural gas undertakings involved in the transmission, distribution, storage, supply and shipping of gas and to regulate natural gas installers with respect to safety. The CER is working to ensure that consumers benefit from regulation and the introduction of competition in the energy sector.

Under the Gas (Interim Regulation) Act, 2002, the CER is responsible for the regulation of the Irish gas network and supply or retail market. The CER regulates the charges, tariffs and access conditions imposed by Bord Gáis Eireann (BGE) and conducts five-year reviews of revenue earned by the gas network operators. There are also quarterly reviews of the revenue allowed for the NDM customer segment by Bord Gáis Energy (BG Energy), the retail trading arm of BGE. Access conditions, connection charges and use of system tariffs imposed by the transmission and distribution operators are also regulated; this concerns Bord Gáis Networks as the owner of the gas transmission and distribution systems and Gaslink as the Transmission System Operator (TSO).

1.2 Purpose of this paper

The purpose of this paper is to seek the view of the public and the CER's stakeholders with regard to the development of competition in the domestic retail gas market, with a view to the removal of the *ex ante* retail price control that applies to BG Energy. The objective of this proposed project is to consider whether the methodology and findings as set out in the Roadmap[1] are still valid in relation to any changes in market conditions. The CER undertook preliminary discussions with a number of stakeholders prior to preparing this paper, and thanks those who participated. This consultation paper reviews the market

[1] Roadmap for Deregulation in the Non-Daily Metered Retail Gas Market, Decision Paper CER/11/071, 7 June 2011

definitions and competition assessment, and identifies and assesses regulatory options.

In order to make an informed and impartial decision on this topic, the CER wishes to obtain comments from members of the public, the energy industry, customers and all other interested parties. The CER commits to considering all views on their objective merit and affording each respondent the opportunity to clarify any issue raised in this paper.

1.3 Background Information

The CER is the regulatory authority for both electricity and gas services in Ireland. Over the last decade, the CER has overseen the gradual introduction of competition in the retail supply of electricity and gas services for different business and domestic customer segments.

In more recent years the CER, recognising the increased levels of competition and changing market dynamics within the electricity and gas markets has moved to lift retail price controls on the ex-monopolist incumbent suppliers. This process began in the electricity market when the CER published on 2nd December 2009 a consultation paper CER/09/189 entitled *"Review of the Regulatory Framework for the Retail Electricity Market: Proposals on a Roadmap for Deregulation"*. This paper examined the then current state of the Irish electricity retail market and made a number of proposals regarding deregulation. Following consultation with stakeholders the CER published its Decision CER/10/058 on 21st April 2010. This Decision laid out a clear Roadmap for the circumstances under which price controls within the retail electricity sector would be removed.

Although considered different markets, the CER's Roadmap for the electricity sector also laid the foundations for determining the criteria for a competitive market in the provision of retail gas services. On 26th November 2010 the CER published the consultation paper entitled *"Proposals on a Roadmap for Deregulation in the Non-Daily Metered Retail Gas Market"*. This document consulted on the circumstances under which the retail gas market could be considered to be competitive, with the consequent removal of price and revenue controls from BG Energy.

The CER published its Decision on the Roadmap on 7th June 2011. This Decision outlined the characteristics which would define a competitive market in the retail Non-Daily Metered (NDM) gas sector and which would trigger the removal of revenue and price controls from BG Energy. The CER also decided on what other actions should be taken, apart from the removal of price control, in order to ensure a fully competitive market for the provision of retail gas services to domestic customers.

The CER has taken full account of the EU Third Package requirements, in particular the retail market measures.[2] The key themes in the Third Package relating to the retail market are consumer protection, and measures relating to the operation of the retail market such as ensuring clear rules on the roles and responsibilities of market players, and rules concerning customer switching.

1.4 Approach

In undertaking this market review, the CER seeks to build on the approach adopted under the Roadmap. This review follows the same format used within the Roadmap, in that it starts by defining the relevant market and then examines the level of competition within this market. The conclusions reached within the competitive assessment part of the review then leads to a discussion on appropriate regulatory options, following which conclusions and next steps in the market review process are put forward.

Prior to issuing this Consultation Paper, the CER engaged in pre-consultation discussions on a range of issues relating to the market review with suppliers and other relevant stakeholders including the Competition Authority, the Economic and Social Research Institute (ESRI) and ComReg. The CER also issued a data request to suppliers in relation to certain key metrics within the retail gas market.

The CER would like to express its gratitude for the input provided by all those who took part on these pre-consultation meetings and for the responses received to its data request.

1.5 Structure of this paper

This paper is structured in the following manner:

- **Section 2.0 defines the relevant retail gas market;**
- **Section 3.0 assesses the level of competition in the market;**
- **Section 4.0 identifies and discusses regulatory options;**
- **Section 5.0 presents conclusions and sets out the next steps;**
- **Appendix A** contains a summary list of all of the questions which the CER has asked in this Consultation Paper

[2] The 'third legislative package' which was adopted at European level in July 2009 obliges national regulatory authorities to oversee and monitor market opening and the introduction of competition in electricity and gas markets. See Directives 2009/72/EC (electricity) and 2009/73/EC (gas) of 13th July 2009.

1.6 Responding to this paper

Interested parties are invited to comment on the issues raised in this paper this consultation paper by close of business on Friday 16 November 2012.

As responses will be published in full on CER's website, respondents should include any confidential information in a separate Annex. Submissions on this paper should be forwarded, preferably in electronic format, to:

Siobhan Keating
Commission for Energy Regulation,
The Exchange, Belgard Square North,
Tallaght,
Dublin 24.
E-mail: skeating@cer.ie

2.0 Market Definition

2.1 Market Overview

Competition in the supply of natural gas in Ireland got underway in 2004, with three suppliers competing in the provision of natural gas services to large industrial and commercial users. The same year, Flogas entered the domestic market when it began to supply gas to customers in parts of the country, initially on an exclusive basis.[3] Since 2004, the CER has overseen the gradual liberalisation of the gas supply market which culminated in full market opening in July 2007. Independent companies now supply 30% of the retail domestic gas market (by customer numbers) where the total customer base (at end Q2 2012) stands at 628,500.

There are now four suppliers actively competing in the NDM retail gas market. These are Airtricity, BG Energy, Electric Ireland, and Flogas. BG Energy is the incumbent supplier. Flogas entered the domestic market in 2004 and Airtricity in 2010. Electric Ireland entered the residential gas market in 2011. Flogas supplies only gas; the other three suppliers offer both gas and electricity.

Of the suppliers offering both gas and electricity, Airtricity and Electric Ireland offer a “dual fuel” product, where consumers are offered discounts linked to the purchase of both products. BG Energy, although it offers both gas and electricity, contends that it does not technically offer a dual fuel product because it is prevented from discounting its gas offer and is prevented by its licence from tying the supply of gas with any other product.[4] For the purposes of this market review, however, we have taken the broadest possible definition of dual fuel as meaning the supply of gas and electricity by a single supplier and have not confined this definition solely to bundled gas and electricity offers.

2.2 Approach to defining the market

The starting point for an analysis of competition within a given market is the definition of the market in question. Economic markets are not defined simply on

[3] Flogas’ domestic market entry in 2004 was due to its winning of a competition held by the CER that year for the franchise to supply natural gas to residential customers (initially on an exclusive basis) in Athlone, Mullingar, Tullamore (including Clara), Ballinasloe and Galway (including Oranmore).

[4] In economic terms, *tying* occurs where one product (X) is only made available if another product (Y) is also bought although Y may also be bought separately. In contrast, *bundling* is the practice of selling two (or more) products together; the products may be available only as a bundle or, if available separately, are often offered at a discount relative to their individual prices.

the basis of a set of products or services that resemble each other in some fashion, but are instead delineated as a set of products that exert some form of competitive constraint on each other.

European case law[5] defines a relevant product market as one comprising all products or services that are sufficiently interchangeable or substitutable, not only in terms of the objective characteristic of those products, their prices or their intended use, but also in terms of the conditions of competition and/or the structure of supply and demand for the product in question.

Market definition also needs to encompass a consideration of the geographic dimension to the market. A geographic market is normally defined as an area in which the conditions of competition are similar or sufficiently homogenous, and which can be distinguished from neighbouring areas in which the prevailing conditions of competition are appreciably different.

2.3 Scope of market definition

In CER's Roadmap for Deregulation in the NDM Retail Gas Market ('the Roadmap)[6], the CER identified a Fuel Variation Tariff (FVT) market, an NDM Industrial and Commercial (I&C) market and an NDM Residential market. Respondents to the consultation generally agreed with these market definitions, and the CER considers that they remain valid now. Only the NDM Residential market is still subject to regulation and that is the focus of this consultation.

The 2010 Roadmap consultation concluded that there were separate retail markets for the supply of retail gas and electricity services. The CER came to this conclusion due to lack of direct substitutability between retail gas and electricity services. The Roadmap also found that the NDM retail residential gas market is national in scope.

The current review will consider the extent to which the NDM Residential **product market definition** as set out in the Roadmap remains valid. In particular, it will consider the following issues:

- Can the provision of domestic gas and electricity services be considered to fall within the same market?
- Is there a product market for bundled retail domestic gas and electricity 'dual fuel' services?

[5] Commission Notice on the definition of relevant market for the purposes of Community competition law: Official Journal C 372 , 09/12/1997 P. 0005 – 0013

[6] See *Proposals on a Roadmap for Deregulation in the Non-Daily Metered Retail Gas Market*, CER Consultation Paper CER 10/212, 26th November 2010 and CER Decision Paper CER 11/071 dated 7th June 2011.

The market definition exercise also considers the **geographic market definition**.

2.4 Definition of the relevant product market

2.4.1 Is there a separate retail market for gas supply?

In the Roadmap, the CER found that gas and electricity cannot be substituted from either the demand or the supply side and so cannot be considered to be within the same product market. This finding is briefly reviewed here.

The analytical process of defining a relevant market begins with the smallest possible product market, which in this case is the retail market for the supply of NDM residential gas services. To assess if demand or supply substitution might exist for this product, the Small but Significant Non-transitory Increase in Price (SSNIP) test is used to identify the existence of products which may be considered to be close substitutes to each other from both a demand- and supply-side perspective.[7]

<u>Demand side</u>

On the demand side, a gas customer would not find it easy to switch to a product such as electricity in response to a SSNIP without incurring significant switching costs, such as the purchase of a new heating boiler, cooker and so on. This would imply that, from the perspective of residential natural gas customers, electricity is not a strong substitute for natural gas.

Although it is outside the scope of this review, it may be observed that the same is true of substitutability in the opposite direction, i.e. that electricity customers are unlikely to view gas as a viable substitute either. In fact, given the inherent characteristics of electricity supply and its far wider range of uses in the home compared to natural gas, it is obvious that gas could in no sense be regarded as any kind of viable substitute for electricity. In this sense, there is a clear asymmetry in substitutability between the two products, given that electricity (or indeed other products such as oil) might be viewed as a substitute (albeit not a very strong one) for gas but not *vice versa*.

[7] The SSNIP test was originally conceived by the US Department of Justice (see US Horizontal Merger Guidelines, Rev. 1992) and also forms part of the EC's approach to market definition set out in the Commission Notice. The SSNIP test examines if, in response to a permanent price increase in the range of 5% to 10% by a hypothetical monopolist (HM) of a given product set, sufficient numbers of customers would switch to readily available alternative substitute products with the result that it would render the price increase unprofitable. If the level of switching by customers to such alternative products is sufficient to render the price increase unprofitable then the alternative products should be included within the relevant product market.

Supply side

The assessment of the scope of supply-side substitution takes into account the extent to which a supplier not currently active on the relevant product market (i.e. the retail NDM gas market) would decide to enter the gas market within a reasonable timeframe and without incurring significant switching costs in response to a SSNIP in the price of retail gas. On the supply side, a provider of electricity to residential customers would not be able to readily switch to supplying gas customers within a short timeframe and without incurring significant costs in response to a price rise made by a hypothetical monopolist in retail gas supply. This is because although an electricity supplier could purchase the inputs required to enter the retail gas market, it would incur additional costs including those associated with operating under a different regulatory regime, management, administration, marketing and so forth. The costs associated with market entry would indicate that gas and electricity are not strong substitutes from a supply perspective either.

However, as electricity suppliers have entered the gas market and currently provide gas supply services to customers along with their existing electricity services (and vice versa for gas suppliers), even though they are not considered to be strong supply-side substitutes, they may exercise a competitive constraint as a form of potential competition. This issue will be examined further in the competition assessment.

2.4.2 Is there a separate retail market for dual fuel services?

Even if gas and electricity services are not considered to be direct substitutes for each other, they may still be considered to be part of the same retail market if there is significant demand for the products sold together as a bundle.

In particular, the CER needs to consider if recent developments in relation to retail supply of energy services indicate that there is a retail market that encompasses the provision of both retail gas and electricity services by the same supplier – a 'dual fuel' market.

For the purposes of this consultation, we consider that 'dual fuel' includes the supply of gas and electricity by a single supplier, no matter how the supplier chooses to market the supply. This gives the broadest possible market to consider whether or not dual fuel may be a substitute for gas, and would mean that BG Energy's offering of both gas and electricity would fall within the dual fuel definition even though it is not marketed as a bundled offering in the sense that BG Energy does not offer explicit discounts for the purchase of both products together.

Demand side

Market data submitted in response to the data request issued to suppliers at the outset of this review indicates that just under 50% of customers now purchase gas and electricity from the same supplier, and this was supported by the results of the customer survey. Ready switching to dual fuel is made possible because all gas customers are also already electricity customers, so there are no additional switching costs, in terms of equipment investment, for customers associated with the switch from gas-only to dual fuel services.

The analysis of demand-side substitution considers the extent to which a proportion of customers of gas would switch to purchase dual fuel in response to a SSNIP in the price of gas. Since the publication of the Roadmap, dual fuel offerings have become more prevalent, in particular since Electric Ireland's entry to the residential gas market. An initial assessment indicates that, for some gas customers, there is a willingness to switch to a dual fuel offering – in the CER's 2012 Consumer Survey it was found that 60% of gas customers who had switched did so to avail of a combined offer for electricity and gas.[8]

However, a significant proportion of customers continue to purchase gas and electricity separately, and this has been maintained even when discounts are offered which are in excess of a hypothetical SSNIP. For gas and dual fuel to be good demand-side substitutes to the extent that the gas market would be broadened to be considered a dual fuel market, there would need to be a significant reduction in demand for the individual elements of the bundle, so that customers would not be likely to "unpick" the bundle.

Our conclusion on the demand side is that while a proportion of customers would be likely to switch to dual fuel in response to a SSNIP, a proportion would not, and this is borne out by actual market behaviour. However, even if the gas market is not broadened to become a dual fuel market, the existence of dual fuel offerings may exercise a competitive constraint on the gas market, and this is considered further in the supply-side analysis and in the competition assessment.

Supply side

On the supply side, bundling two or more components into one product is generally driven by savings in production, distribution and transaction costs. In the retail gas industry, there would not be production costs associated with bundling gas and electricity, and suppliers would expect to achieve savings primarily in transaction costs. At present, most, but not all, suppliers of gas also supply electricity, and so most, but not all, gas suppliers could in effect be dual fuel suppliers.

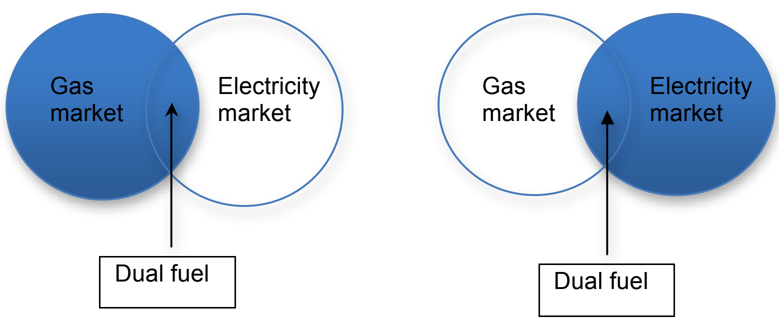
[8] CER Residential Gas: Market Survey results, July 2012.

In order to determine whether the gas market should be broadened to encompass dual fuel offerings (which would in effect mean that the residential energy market was made up of a residential electricity market, and a residential dual fuel market) we need to consider the extent to which a hypothetical monopolist in the dual fuel market could maintain the price of the dual fuel offering above the competitive level.

In examining this question the CER has drawn on analysis from the telecommunications sector, where the issue of defining markets containing bundled products has been analysed in some detail. In particular, the 2010 report by BEREC[9] on the impact of bundled offers on retail and wholesale market definition[10] suggests that where such offers are prevalent, one option could be that separate markets for each of the standalone products still exist but with the bundled offering forming part of each of the standalone products.

This is illustrated in the case of dual fuel in Figure 1 below, where such bundled offers could be viewed as forming part of both the relevant markets for retail gas and retail electricity services, while at the same time maintaining separate market definitions for both gas and electricity provision.

Figure 1: Market definition and dual fuel offers



Under such a situation, the relevant market is not considered to be that for dual fuel because the hypothetical monopolist in the dual fuel market cannot maintain the price of the bundle above the competitive level without consumers being able to ‘unpick’ the bundle by buying each of the component parts of the bundle on an individual basis. Instead, separate markets exist for gas and electricity supply with dual fuel considered to be part of both markets, as shown above. The hypothetical monopolist providing dual fuel services cannot maintain price

[9] Body of European Regulators of Electronic Communications.
[10] See BEREC report on impact of bundled offers in retail and wholesale market definition (BoR (10) 64), December 2010, available at: http://bit.ly/MWw8NL

profitability above the competitive level without consumers unpicking the bundle but the availability of dual fuel offers means that the hypothetical monopolists in each of the gas and electricity markets are constrained in their ability to maintain the prices of gas and electricity above the competitive level.

The above approach to market definition given the existence of bundled offerings equates well to the situation that exists in practice in relation to the supply of retail gas and electricity services. While a growing number of customers are availing of dual fuel offers, customers also can and do purchase the two services separately and providers are still willing to supply both services separately.

Because all retail gas customers are also electricity customers and, hence, all are potentially, at least implicitly, dual fuel customers, the existence of specific dual fuel offers does not, using the above analytical framework, require any alteration to the existing market definition as a gas-only market. The growing importance of such offers does, however, have implications for the assessment of competition within the gas market. This is an issue which is discussed in more detail in the competition assessment.

Preliminary discussions with stakeholders resulted in general agreement that gas and electricity supply would not fall within the same relevant product market. Bearing in mind the above analysis, it is the CER's provisional view that this conclusion is still appropriate and that the supply of retail gas and electricity services in the NDM residential sector continue to reside in separate product markets.

2.5 Definition of the relevant geographic market

The market definition exercise also considers the **geographic market definition**. A geographic market is normally defined as an area in which the conditions of competition are similar or sufficiently homogenous, and which can be distinguished from neighbouring areas in which the prevailing conditions of competition are appreciably different. The Roadmap found that the NDM retail residential gas market is national in scope.

In considering whether the NDM retail residential gas market is larger than national in scope, the CER assessed in the Roadmap proposals whether or not Northern Ireland would also fall within the same relevant geographic market which might then be defined on an all-island basis. The CER's view was that, while there were no theoretical barriers to suppliers operating in both jurisdictions, the conditions of competition are significantly different between the two.

The CER proposed to review this conclusion when the Common Arrangements for Gas ('CAG') were fully developed such that an all-island market for buying, selling, transporting, supply and developing natural gas services would be in existence. Discussions on the completion of the CAG are still ongoing with the Northern Ireland Utility Regulator and so it is the CER's view that the time is not yet right at this stage to re-open the issue of whether or not the market should be defined on an all-island basis.

The CER has also considered whether the NDM retail residential gas market may be sub-national, i.e. whether or not areas of the country may be identified where the conditions of competition are sufficiently different to warrant their definition as separate markets.

Generally, a finding of a sub-national market would involve identifying established differences in commercial behaviour by suppliers in different geographic areas of the country. For example, competitive conditions would be seen as homogenous where there is uniform pricing across a country and where there is little difference in product characteristics between different geographic areas. A sub-national market would usually be characterised by differentiated pricing, and potentially by differentiated products. In the NDM residential gas market, pricing is standard, and the product is standard, and although BG Energy is subject to a regulated price, other operators are not.

The CER has considered whether a sub-national market should be defined based on the gas supply footprint. While the NDM residential gas market may be smaller than national because natural gas is not available on a national basis, and the residential offering is limited by the geographic limit of the natural gas network, this is not a rigid boundary in that the network could extend within the national boundary according to demand.

In any case, a finding of a sub-national market would have no material impact on this market review, either in relation to the competition assessment or on the consideration of regulatory options. As a result, the CER's preliminary position is that the NDM residential gas market should be defined as national, in the same way that other gas markets have been so defined.

2.6 Preliminary conclusions on market definition

The CER's preliminary conclusion is that there is a relevant product market for the supply of retail NDM gas. The retail NDM gas market is national in geographic scope.

Q1. Respondents are invited to comment on the CER's proposal outlined in this section to define a national market for the retail supply of natural gas to Non-Daily Metered residential customers. Are you in favour of this proposal? Outline your reasons for agreement or disagreement.

3.0 Competition assessment

Having defined a relevant market, the competition assessment examines the conditions of competition in that market, with a view to determining whether any organisation has a position of market power. An undertaking is deemed to have market power if it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers. Market power gives a dominant operator the ability and incentive to charge consumers excessive prices, and also to engage in anti-competitive practices which would deter other suppliers from entering the market, and could damage the prospects of any suppliers which did enter. This could include, for example, engaging in margin squeezes and below cost selling. In the Roadmap proposals, the CER reviewed a number of quantitative and qualitative measures to determine if any party in the retail gas market has market power.

3.1 Market shares

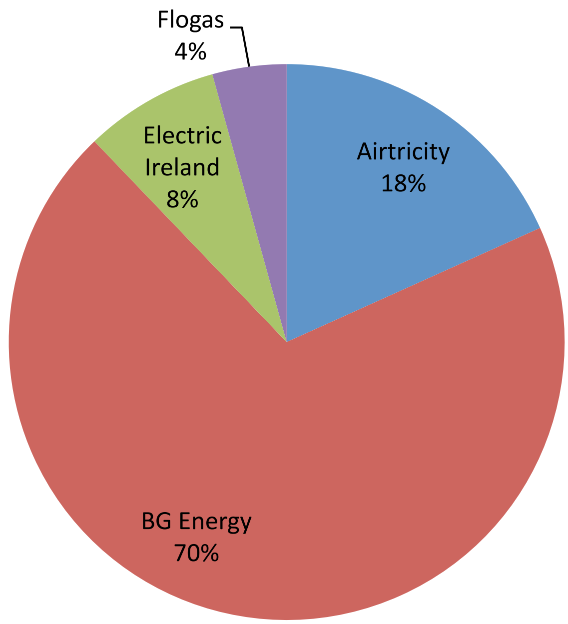
There are currently four suppliers in the NDM retail residential gas market. BG Energy is the ex-monopolist incumbent supplier, and also supplies electricity services. Airtricity – which entered the residential gas market in 2010 and also has an active presence in the electricity sector – is the largest alternative supplier within the market. Electric Ireland – the ex-monopolist incumbent electricity supplier, which entered the gas market in 2011 – and Flogas, which first entered the retail gas market in 2004, are also active players within this sector.

Market shares are often used as a proxy for market power. A high market share alone is not sufficient to establish if an undertaking holds a position of dominance. However, according to established EU case law, very large market shares (often taken to mean in excess of 50%) are generally taken as evidence of a dominant position, in particular if the market share in question has remained stable over time.[11] Gradual loss of market share may indicate that the market is becoming more competitive, but does not preclude a finding of dominance.

As Figure 2 below shows, BG Energy still retains a share of 70% of customers in the retail market for NDM residential gas supply, which means that its market share is well above the threshold at which an assumption of dominance under competition law would normally be made. Airtricity, the largest alternative supplier, holds a market share of 18%, with Electric Ireland on 8% and Flogas on 4%.

[11] Case 27/76 United Brands Co and United Brands Continental BV v Commission [1978] 1 CMLR 429.

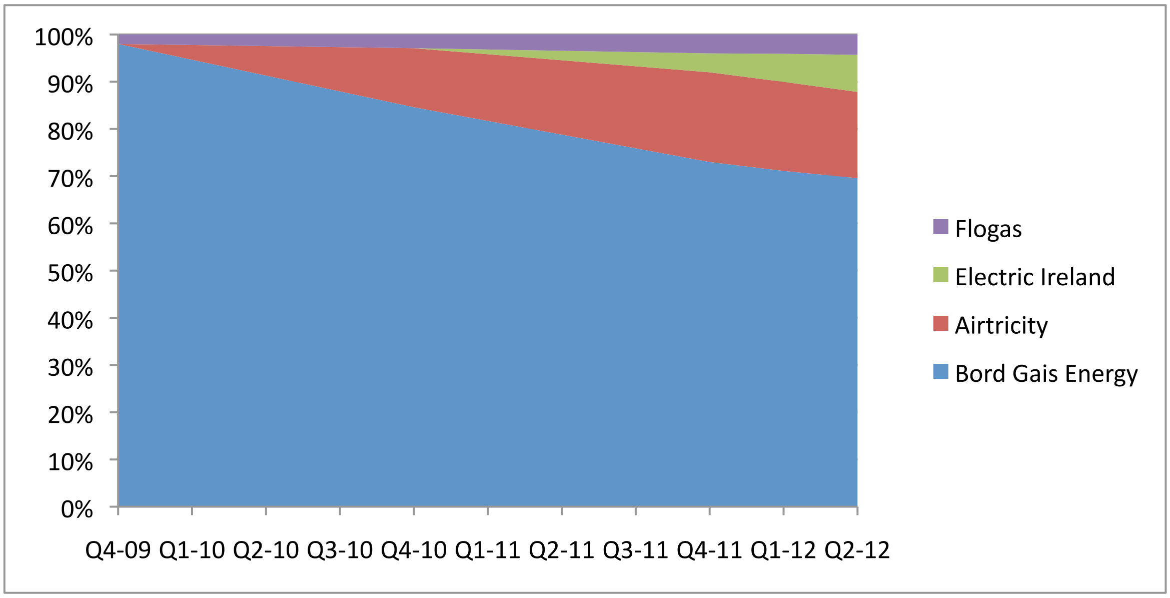
Figure 2: NDM residential market shares (by customer number) Q2 2012



Source: BGN

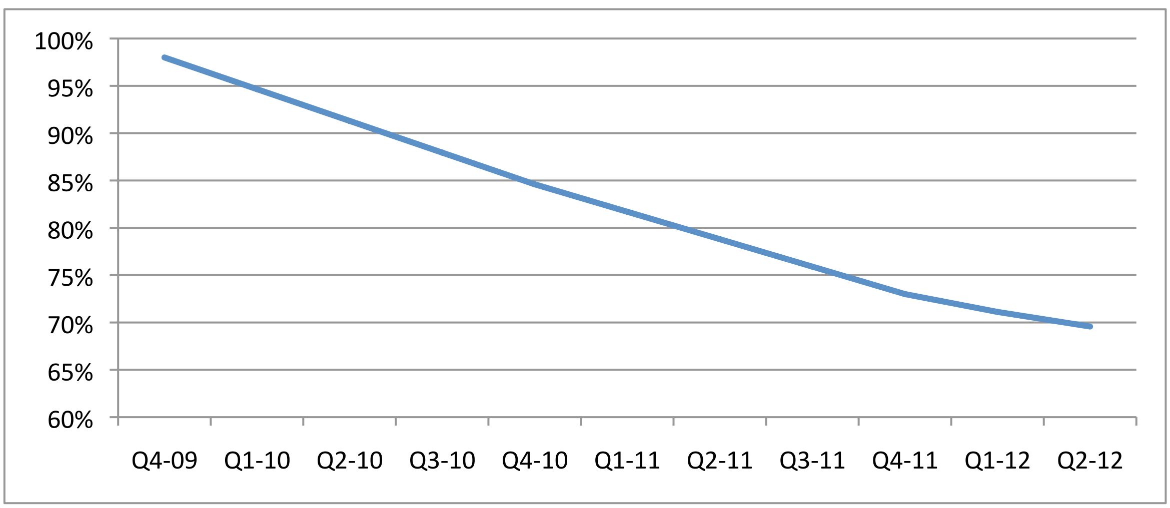
Figure 3 below illustrates market share movements within the NDM residential gas sector since competition was introduced in the sector in late 2009. This shows that BG Energy has been gradually losing market share to its competitors over this period, principally to Airtricity but more recently to Electric Ireland as well, with Flogas maintaining its market share throughout this period. As Figure 3 illustrates, market share movements would appear to be on a trajectory towards a competitive outcome but the timescale within which this might be achieved is still far from certain, nor can any firm assumption made that incumbent will continue to lose market share in the way it has done to date, a trend that is illustrated further in Figure 4 below, which shows BG Energy's market share within the NDM residential sector since 2009.

Figure 3: NDM residential market shares (by customer number), 2009-12



Source: BGN

Figure 4: BG Energy market share (by customer number) 2009-12



Source: BGN

The above figures demonstrate clearly that, based on current market shares, and despite a steady decline in market share, a strong presumption may be made that BG Energy remains the dominant supplier of NDM retail residential gas services. However, the existence of a high market share only means that the operator *may* be in a dominant position, i.e. a high market share is not sufficient on its own to establish dominance. For that reason, the competition assessment must examine other structural and behavioural conditions in the market.

Q2. Respondents are invited to comment on the CER's proposal that BG Energy's market share is presumptive of dominance, pending the examination of other economic factors. Outline your reasons for agreement or disagreement.

3.2 Barriers to entry, expansion and exit

The examination of potential barriers to market entry, expansion and exit is carried out in order to measure the ability of an operator to behave to an appreciable extent independently of its competitors, customers and consumers.

The Roadmap proposals considered a range of possible barriers to entry, including sunk costs, non-discriminatory network access, customer switching, and branding. The CER has reviewed the previous analysis, and has taken into account responses to the previous consultation and discussions with stakeholders. The following barriers to entry are considered to be potentially significant:

- Wholesale market liquidity
- Economies of scale and scope
- Customer switching
- Dual fuel offers
- Branding

3.2.1 Wholesale market liquidity

The satisfactory availability of wholesale products is a necessary condition for facilitating an effectively competitive retail market. Establishing access to wholesale products constitutes a form of sunk costs. Sunk costs are costs which are required to enter a market, but which cannot be recovered on exit. The mere existence of sunk costs does not automatically imply that entry barriers are high. It is acknowledged that a certain level of sunk costs will be involved in entering most markets, and that the incumbent may also have had to pay a similar level of sunk cost before it entered the market. However, in some circumstances it is more difficult for new entrants to break into a market than it was for the first firm to enter, creating a decisional asymmetry where an incumbent has already paid sunk costs but a new entrant has not. In general, the higher the sunk costs of entry, the less likely it is that a firm will enter.

The CER notes that potential retail gas suppliers have access to a large and highly liquid NBP, which reduces the capital investment needed to enter the market. This differs significantly from the electricity market, where there are greater constraints particularly in the contracts or forwards market (where suppliers hedge their prices). Potential electricity retail suppliers would need to either establish a long-term contract with a generator, or establish their own generation facilities. The CER's view is that the liquidity of the gas wholesale market means that access to the wholesale market is not considered as a barrier to entry to the retail market.

Q3. Respondents are invited to comment on the CER's assessment of wholesale market liquidity. Outline your reasons for agreement or disagreement.

3.2.2 Economies of scale and scope

Economies of scale generally refer to the cost advantage which a large-scale operator may have over a smaller operator, specifically where the marginal cost of production decreases as the quantity of output produced increases. This means that the cost of supply per customer decreases in line with the number of customers supplied.

The relatively small scale of the gas market - with 628,500 domestic customers at end-Q2 2012 - could be a barrier to market entry and expansion. In preliminary discussions, one stakeholder put forward a view that the minimum efficient scale required by suppliers in the NDM residential gas market equates to around 25% market share and that acquiring this level of market share was necessary for sustainable commercial operation. The Roadmap criteria set out for the definition of a competitive market included a requirement for at least two independent suppliers each with a market share in excess of 10%, which again gives an indication of minimum scale.

Related to this is the issue which some stakeholders raised about the modest profit margins to be made in the sector. BG Energy's retail margin under the RCF is set at 2% and with other suppliers discounting off the incumbent's regulated retail tariffs, market entry and expansion is only profitable in circumstances where alternative operators have a lower cost base than BG Energy. If scale economies are a significant factor within this market, new entrants will not enjoy such advantages, which in turn means that the prospects for a long-term competitive outcome would be poor. In this context, it is noted that discussions with gas suppliers who supply the business markets but not the residential market noted barriers to entry including acquisition costs and system requirement costs which are associated with economies of scale. This has obvious implications for regulatory policy within the sector.

Economies of scope refer to the cost advantage which an operator may enjoy by using the same production process to produce more than one final product. With the firm in a position to supply the customer with two or more products at the same time, the average cost it faces in doing so are reduced and the greater the efficiencies it enjoys in supplying both products at the same time. In the case of energy supply, economies of scope are likely to be achieved in administration rather than production, for example in shared billing processes.

The presence in the market of a number of market players who also supply retail electricity services would indicate that economies of scope may be a relevant factor within the market. The existence of scope economies could be a positive factor in boosting competition, by facilitating market entry of players already present in the adjacent retail electricity market. That said, not all players in the residential gas market are dual fuel providers.

The substantial market share that BG Energy still enjoys could be explained by scale economies but it could equally be simply a result of its inherited position as the ex-monopolist incumbent supplier within the sector. However, the fact that the market for residential gas is relatively small and is limited to the gas network footprint could potentially constitute a barrier to entry and expansion associated with economies of scale.

Q4. Respondents are invited to comment on the CER's assessment of economies of scale and of scope. Outline your reasons for agreement or disagreement.

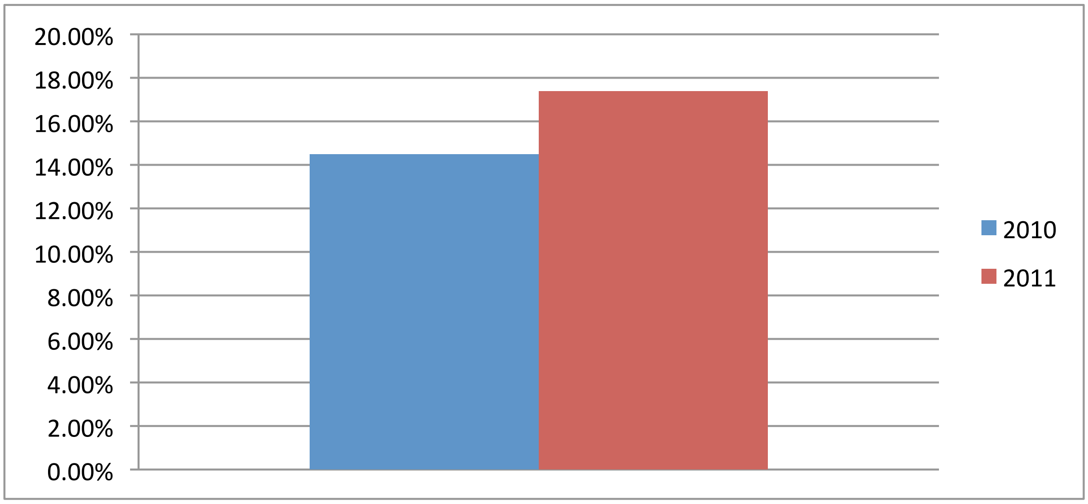
3.2.3 Customer switching

The CER noted in the Roadmap proposals that, according to ERGEG "*The possibility to switch to a new supplier within a short period of time and without obstacles and disadvantages for the customer is an essential pre-requisite for a functioning and efficient market*."[12] Low barriers to switching would indicate that, even when market share may still be high, market power may be reduced.

The significance of customer switching was also recognised in the Roadmap Decision, as annual switching rates of at least 10% were set as one of the triggers for potential deregulation.

[12] ERGEG Position Paper "Supplier Switching Process Best Practice Proposition" E05-CFG-03-05. P3 Section 5.

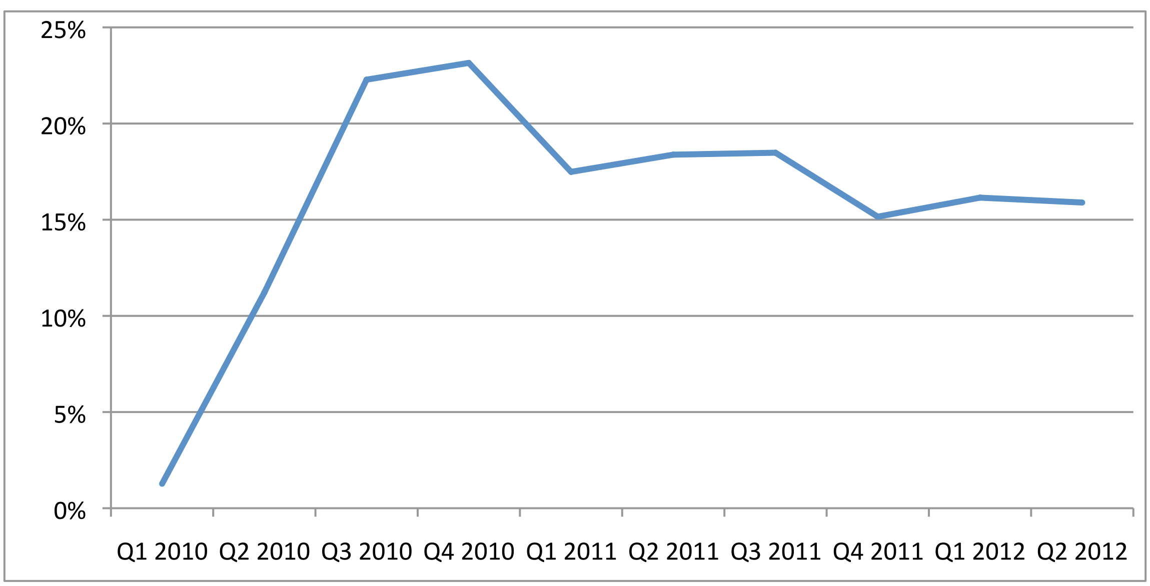
Figure 5: NDM residential market annual switching rates (%)



Source: BGN

As Figure 5 above shows, switching levels within the sector have remained comfortably above the 10% rate set down in the Roadmap Decision over the past two years. Indeed, the rate of switching showed a marked increase between 2010 (where the annual rate stood 14.5%) and 2011, where the annual switching rate rose to 17.4%. Quarterly data on up to the end of June 2012 show that switching levels are also likely to remain well above the 10% threshold in the current year, as Figure 6 below illustrates.

Figure 6: NDM residential market quarterly switching rates (%), 2010-12



Source: BGN. Figures represent quarterly switching rates expressed on an annualised basis as a percentage of total NDM residential gas customers at the end of each quarter.

The CER's 2012 Consumer Survey[13] probed the reasons customers gave for switching. The primary reason given by most respondents was to save money, although there was some decline in the primacy of saving money since 2011. Around 60% of surveyed customers claimed they wished to avail of a combined offer for electricity and natural gas but the survey does not distinguish between purchasing from a single supplier and availing of a combined offer – for example, of the 18% of respondents who changed electricity supplier but remained with their existing gas supplier, it is reasonable to assume that a proportion switched to take electricity from BG Energy.

Of the customers surveyed, 18% had switched back to their original supplier. While the primary reason for this was financial, a significant number switched back because they were unhappy with the service they had received on the initial switching, and over 60% of those who switched back cited this as a reason, compared with 34% of all switchers.

The Consumer Survey indicated a generally positive experience of the process associated with switching, with only 5% of customers describing it as 'difficult' or 'very difficult'.

This suggests that it is not difficult for retail gas customers to switch suppliers between competitors and products, and so indicates that switching does not constitute a barrier to gas market entry or expansion.

Q5. Respondents are invited to comment on the CER's assessment of the extent to which customer switching constitutes a barrier to entry or expansion. Outline your reasons for agreement or disagreement.

3.2.4 Dual fuel offers

The existence of dual fuel gas and electricity offers for residential customers has already been discussed in the context of market definition where it was concluded that while a hypothetical monopolist providing dual fuel services cannot maintain price profitability above the competitive level without consumers unpicking the bundle, the availability of dual fuel offers means that the hypothetical monopolists in each of the gas and electricity markets are constrained in their ability to maintain the prices of gas and electricity above the competitive level. The question that needs to be considered in the competition assessment is to what extent is BG Energy constrained by these offers in the NDM residential gas market.

Two of the four market players (Airtricity and Electric Ireland) actively promote bundled dual fuel offers, with both offering additional price discounts to customers who avail of both services from the same supplier. The incumbent, BG

[13] CER Residential Gas: Market Survey results, July 2012.

Energy, is also a supplier of residential electricity services. While BG Energy is not permitted under the conditions of its licence to discount its retail gas price, it may discount electricity supply as long as it does not supply below cost. The terms of BG Energy's licence also prohibits it from tying, such that it cannot make the supply of natural gas conditional on the supply of any other product or service. This does not preclude BG Energy from making bundled offers with gas and electricity so long as all the relevant terms in its licence are complied with. The other supplier in the market, Flogas, is a gas-only supplier and is not currently active in the residential electricity market and so does not have a dual fuel offering.

As part of the preparation of this review, the CER requested information from all suppliers on their offerings in the gas market, the electricity market, and in the provision of a dual fuel offering. This information was provided on a confidential basis, and the CER thanks suppliers for their cooperation. The following summary is based on the confidential data provided.

The CER's analysis indicates that, while dual fuel offers had a significant impact on the market from late 2010 into 2011, the proportion of customers who take their electricity and gas services from the same supplier has stabilised from late 2011 till the present, and has remained at just under 50% of all domestic gas customers for the last three quarters.

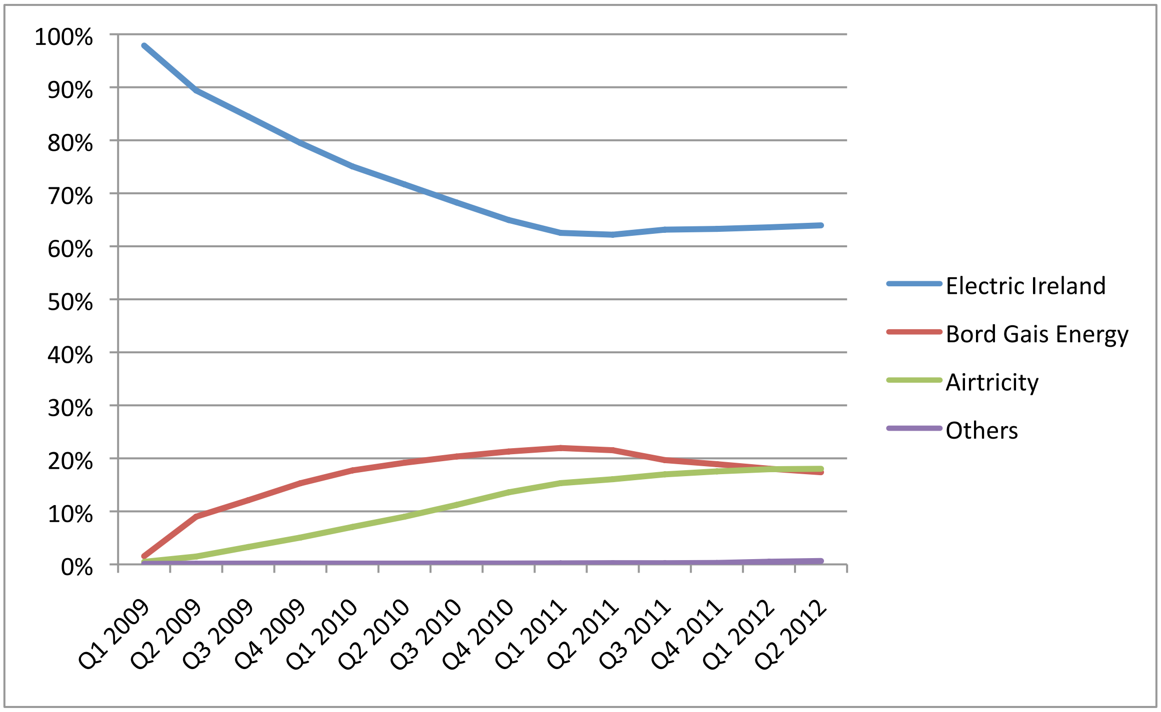
Within this overall trend, as Figure 7 confirms, BG Energy's share of the residential electricity sector has been in decline since the first quarter of 2011, with its market share of 21.95% at that point falling back to 17.38% little more than twelve months later, which means that BG Energy has lost 4.57% of the overall customer base in the residential electricity market in the last year.

As Figure 7 also shows, this market share loss has occurred at the hands of Airtricity and Electric Ireland, both of whom are competing with BG Energy in the residential electricity and gas markets, primarily on the basis of dual fuel offerings. As the data on tariff offerings set out in Table 1 below show, however, BG Energy's combined offering for both services compares favourably on price with those of its competitors despite its inability to offer discounts on its regulated gas tariffs.

Comparing the trends in the data on dual fuel provided by suppliers in response to the data request[14] and those in Figure 7 above, it appears that BG Energy's market share loss in electricity only started to accelerate at the point in time (Q3 2011) at which the take-up of dual fuel services by residential customers had started to plateau in overall terms but where the market shares held by the other two dual fuel providers also continued to vary.

[14] These figures, which show trends in dual fuel customer numbers at individual supplier level, have not been published in this Consultation Paper due to reasons of commercial confidentiality.

Figure 7: Residential electricity market shares (%), 2009-12



Source: ESBN

The issue that the CER needs to consider for the purposes of the current consultation is what ramifications – if any – this competitive activity in the residential electricity market and the evolving competitive activity for dual fuel services has for its regulatory approach in the residential gas market and the continuation of *ex ante* price controls in this market. The first point of relevance in this respect is CER's market definition, where it has provisionally decided that the demand and supply of residential electricity and gas services reside in separate product markets. As a result, this would suggest that any alteration to the regulatory framework for gas should only be made by considering market developments in gas and not developments in both gas and electricity. However, the importance of dual fuel offerings has been recognised in considering their impact as a competitive constraint, and the gas and electricity markets are connected through the supply patterns.

The second point is that the domestic electricity market has been deregulated since April 2011, which has enabled the previously incumbent supplier to engage in price competition with other electricity providers since this date. The increased price competition that has occurred since April 2011 has coincided with BG Energy's market share decline within the electricity sector but it has also resulted in more attractive and varied energy prices for retail customers over this timeframe.

The third point which the CER has considered is the extent to which BG Energy's prices appear to be competitive. The CER carried out a comparison of retail prices using the *bonkers.ie* website. For a retail customer looking for gas and electricity supply from one supplier, searching on *bonkers.ie* results in an immediate message that the greatest savings can be made by purchasing gas and electricity separately. This message precedes the comparison table, and applies to all three dual fuel suppliers. The website recommendation, irrespective of current supplier, is to purchase gas separately from Flogas, and electricity from BG Energy (unless BG Energy is current supplier, in which case choose Airtricity). According to the website, the potential savings by purchasing separately are greater than those achieved by moving to a different dual fuel supplier. This suggests that the claim that dual fuel is always a cost effective option for customers may not be borne out in practice.

The CER has also compared price discounts offered by BG Energy, Airtricity and Electric Ireland.

For illustration, a snapshot of current retail offerings for residential customers in gas and electricity is set out in Table 1 below.

Table 1: Current retail domestic gas and electricity tariff packages

Supplier	Gas		Electricity		% saving
	Standing charge (€)	*Unit charge (cent per kWh)*	*Standing charge (€)*	*Unit charge (cent per kWh)*	*(Estimated in Year 1)*
Airtricity[1]	95.33	4.484	153.03	16.89	8%
BG Energy[2]	82.66	5.432	116.60	16.13	6%
Electric Ireland[3]	82.90	5.106	119.84	16.72	7%
Flogas[4]	81.73	4.617	*n/a*	*n/a*	*n/a*[5]

Source: Bonkers.ie price comparison website, based on suppliers' published retail tariff plans.

Packages shown are those identified by bonkers.ie as representing best value by supplier. All prices VAT-inclusive.

For comparison purposes, the following search fields were entered: (1) Electricity supplier = Electric Ireland; (2) Electricity supply region = urban; (3) No Nightsaver meter; (4) Electricity and gas bills paid by direct debit; (5) Current electricity plan = standard/domestic; (6) Electricity and gas usage = national average; (7) Natural gas supplier = BG Energy; (8) Current gas plan = standard.

Notes:

[1] Dual Saver (Direct Debit and eBill, 1 year contract)

[2] Discounted electricity offer + Standard Gas (Paperless, Direct Debit & Level Pay)

[3] Dual ValueReward (Direct Debit & Online Billing, electricity option)

[4] Direct Debit Discount

[5] No % saving shown as Flogas is a gas-only supplier. On gas-only basis, tariff shown would yield 13% saving (see Table 2)

As the retail tariff data set out in Table 1 above would appear to show, current combined gas and electricity offers by BG Energy are competitive when compared with those provided by other suppliers. While BG Energy is prohibited in its licence from tying the supply of gas with other products and services, it is subject to the same rules on tariff presentation as all other suppliers and not restricted in how it portrays its dual fuel offerings for marketing purposes so long as its licence terms are complied with.

Fourth, it appears that price competition in the provision of residential gas supply (i.e. gas provided on a standalone basis) remains rather muted, as the figures in Table 2 show.

Table 2: Current retail domestic gas tariff packages

Supplier	Standing charge (€)	Unit charge (cent per kWh)	Estimated Yr 1 Saving
Flogas[1]	81.73	4.617	13%
Electric Ireland [2]	82.90	5.106	3%
Airtricity[3]	95.33	5.187	2%
BG Energy[4]	82.66	5.432	0%

Source: Bonkers.ie price comparison website, based on suppliers' published retail tariff plans.

Packages shown are those identified by bonkers.ie as representing best value by supplier. All prices VAT-inclusive.

For comparison purposes, the following search fields were entered: (1) Supplier = BG Energy; (2) Bill paid by direct debit; (3) Current gas plan = standard; (4) Usage = national average.

Notes:

1 Direct Debit Discount

2 ValueSaver (Direct Debit & Online Billing)

3 Home Gas (Direct Debit and eBill, no fixed contract)

4 Standard gas tariff

Although gas-only supplier Flogas provides a significant discount off BG Energy's standard regulated tariff, the gas discounts offered by the two other dual fuel providers are far more modest. The lack of vigorous price competition by alternative dual fuel providers in the gas market would appear to be a reason why BG Energy is able to stay competitive on price in relation to gas and electricity combined, with all three players targeting their discounts in the larger residential electricity market. However, it might also be argued that it is in the interest of other dual fuel suppliers not to compete vigorously in gas on a standalone basis, as it would hasten deregulation and remove any constraints BG Energy might have compared to such suppliers. Evaluating this claim is difficult, but the CER is certainly mindful of any potential incentives for strategic behaviour, and, as noted in its decision on electricity deregulation, would intervene vigorously if it felt that this was occurring.

Finally, as has already been noted, BG Energy's share of the residential gas market stands at 70%, which is well in excess of the 60% market share figure set out in the Roadmap Decision at which deregulation of the sector might be contemplated. Allowing BG Energy the latitude to compete on price in the residential gas sector could see its share of this market increasing.

When all these factors are considered, the CER would tend towards the view that BG Energy remains dominant in the gas market. It has a market share of 70%, which is strongly presumptive of dominance, and other evidence suggests that it could act in a manner that is harmful to consumers and competition. For instance, it would probably be able to profitably raise prices above the competitive level and thus hurt consumers.

As discussed above, from a formal market definition perspective, electricity and gas are not in the same product market, yet they are “bought together” by a significant number of consumers. If that link strengthened further, it could be considered possible that BG Energy having a high market share in gas would not be harmful to consumers, as any attempt to increase the price of gas (where it was dominant) would be unlikely to be successful given its relatively small market share in electricity. Whether this constraint is sufficient to allow some relaxation of the current price control, either now or in the near future, is an issue which we turn to in Section 4.

Q6. Respondents are invited to comment on the CER’s assessment of the impact of dual fuel offerings on competitive conditions in the retail gas market. Outline your reasons for agreement or disagreement.

3.2.5 Branding

In the Roadmap, the CER identified possible ways in which branding could constitute a barrier to entry. The CER examined whether the use of the same brand by the system operation business and the supply business causes confusion amongst customers. The CER also assessed the extent to which use of the BG brand by BG Energy conferred an advantage by associating BG Energy with the monopoly network business.

In the Roadmap to Electricity Deregulation, the CER concluded that ESB should be offered the choice of rebranding its retail business if it wished to deregulate at a threshold of 60% and this, in turn, allowed for this higher market share threshold to be adopted as one of the triggers for deregulation.

In the NDM gas Roadmap, the CER did not take a final decision on the significance of branding, but was minded to conclude that the retention of the brand by the retail business would warrant a lower market share threshold for NDM residential customer deregulation than if it removed it.

Preliminary discussions with stakeholders resulted in a range of views on the significance of branding as a barrier to entry. Some stakeholders were of the view that the association of BG Energy's brand with the distribution business conferred an advantage which was equivalent to 10-15% of market share, and so was similar to the electricity industry. One stakeholder who believes the brand is important noted that the effect of the brand was particularly important given that there is little product differentiation. Another expressed a view that the gas industry should be treated in exactly the same manner as the electricity industry. Other stakeholders believe the value of the brand is negligible, or at least not proven, and that there is little evident confusion amongst customers.

The CER has taken account of consumer survey findings in reviewing the extent to which branding may be considered as a barrier to entry in the residential NDM gas market. According to the 2012 survey[15], unprompted awareness of all gas suppliers has increased significantly since 2011, and prompted awareness of BG Energy, Airtricity and Electric Ireland were all above 70%.

The level of understanding of current regulation was relatively low, as around 40% of customers had any understanding of existing price regulation. However, there was little variation on this amongst customers of different suppliers, suggesting an even spread of lack of knowledge, and the figure for gas compared well with the figure for electricity, where even fewer customers correctly identified current regulation.

The awareness of the difference between BG Networks and BG Energy has increased since 2011, and customers who are not supplied by BG Energy are more likely to recognise the difference. The actual understanding of the roles of BG Networks and the gas suppliers is mixed, with an improvement in clarity in some areas but not others.

The consumer survey probed the association which customers make between their supplier and the generic product, and compared electricity with gas customers. The finding was that there is a significantly stronger association in electricity than in gas, in that the association of ESB and "electricity" is much stronger than the association of BG and "gas"[16].

The CER recognises that, for some stakeholders, the BG brand is seen as a significant barrier to entry into the residential gas market, but it is of the view that this is not strongly supported by evidence from consumer surveys. This is not to deny that BG Energy has legacy advantages in the residential gas market, and is better placed to take advantage of economies of scale, but rather to question how much of this is associated with the brand.

[15] CER Residential Gas: Market Survey results, July 2012

[16] The survey found that, in 2012, 63% of Electric Ireland customers and 37% of non-Electric Ireland customers continue to refer to their electricity bill as the "ESB bill". Comparable figures in gas are that 13% of BG Energy customers and 2% of non-BG Energy customers refer to their gas bill as the "Bord Gais" bill.

Q7. Respondents are invited to comment on the CER's assessment of the significance of branding as a barrier to entry and expansion. Outline your reasons for agreement or disagreement.

3.3 Preliminary conclusions on competition assessment

In assessing the conditions of competition in the retail NDM gas market, the CER notes that BG Energy's market share was 70% at the end of Q2 2012. While BG Energy's market share continues to decline, it is still at a level which would be highly presumptive of dominance in the market. However, the CER has also assessed a number of other factors which could potentially mitigate market power, and has considered particularly whether wholesale market liquidity, economies of scale and scope, customer switching, dual fuel offers and branding may impact on market power.

The CER's preliminary conclusion is that wholesale market liquidity, economies of scale and scope, customer switching, and branding are not sufficiently strong to counter BG Energy's position of dominance in the retail NDM gas market, and that BG Energy remains in a position of market power where it has the ability and incentive to exert that market power to the detriment of consumers and competition. However, the CER recognises that dual fuel supply could potentially qualify market power to some extent, and has remained open to this possibility in the identification of regulatory options.

Q8. The CER is proposing that BG Energy remains dominant in the relevant product market for the retail supply of natural gas to Non-Daily Metered residential customers, due to its continuing high market share and the absence of factors which would significantly reduce its market power. The CER recognises that dual fuel supply may potentially mitigate market power to some extent. Respondents are invited to comment. Outline your reasons for agreement or disagreement.

4.0 Regulatory options

4.1 Introduction

Ex ante regulatory price controls have been imposed on BG Energy to act as a proxy to competition. In its Roadmap Decision, the CER set out a set of criteria which were to be met before regulatory price controls would be removed. In the NDM residential market, the criteria were as follows:

- Three suppliers should be active in the market
- There should be at least two independent suppliers, each with a market share of at least 10%
- There should be an annual customer switching rate of at least 10%
- Deregulation would not be considered until BG's market share fell below a certain level. An indicative level of 60% was suggested, but no conclusive decision was taken on the level of market share, as CER's view was that this was contingent on a decision on branding.

The CER considered three regulatory options. These were:

- Price Cap
- MAR
- Quarterly RCF

The CER decided that the RCF would continue in its current form, albeit with a new supply cost formula to be introduced in order to better reflect the actual cost to serve and remove the need for a cost to supply Z factor.

The RCF was set initially at the start of the 2011/12 gas year. Following this BG Energy were required to submit revised updates every three months (September, December, March and June). The CER was to examine the submissions and either approve or disallow any tariff changes.

4.2 Current situation

The CER's overall objective is to facilitate the development of a competitive market for the supply of retail residential gas that benefits consumers now and in the future. The liberalisation of the residential gas market has entailed addressing the market power of a dominant incumbent operator, which was previously a monopoly provider. As such, the incumbent operator had the ability and incentive to charge consumers excessive prices, and while excessive prices are clearly the most significant harm to consumer welfare, it could also engage in anti-competitive practices which would deter other suppliers from entering the market, and could damage the prospects of any suppliers which did enter. This could include, for example, the dominant operator engaging in margin squeezes and below-cost selling. It is not primarily a question of whether the incumbent actually did engage in those practices or not – the point is that its position in the market makes it possible that it could.

In this consultation, the CER has reviewed its original definition and competition assessment of the NDM residential market. The CER has found that the relevant market is for the supply of retail NDM residential gas, and that BG Energy's market share is 70%, with the two largest independent suppliers now having market shares of 18% and 8% respectively. The competition assessment set out in Section 3 suggests that even accounting for a range of potentially mitigating economic factors, BG Energy is still dominant in the residential NDM market and as such there is a case for *ex ante* price controls. However, the CER recognises that change in the market, particularly change associated with the take-up of dual fuel offers, may to some extent qualify BG Energy's market power, and has asked for stakeholder comment on this.

As competition in the market develops, regulated prices can potentially be a constraint on achieving a competitive market, because the imposition of price controls can prevent the incumbent from developing a competitive offer, and, where regulated tariffs are kept low, can also exclude new entrants from the market and prevent market players from investing in new capacity[17]. The regulatory challenge is to assess the extent to which *ex ante* tariff regulation in the residential gas market is still required to address actual and potential anti-competitive behaviour by a dominant operator, without unnecessarily prolonging the period of price regulation in a way which would damage the further development of competition.

4.3 Competition criteria

4.3.1 Overall criteria

The CER maintains that the criteria associated with the structure of the market in terms of number of suppliers, their minimum market shares, and the level of customer switching still constitute a valid means of measuring the level of competition in the market. The CER's view is that the criteria represent a reasonable minimum, recognising the scale of the market, and recognising that there is likely to be a proportion of residential customers who will not switch and are effectively uncontestable. This latter point is borne out to some extent in the

[17] EC Sectoral Enquiry on Competition in Gas and Electricity Markets: SEC(2006)1724

Consumer Survey[18] results, which indicated that 64% of residential customers have never switched gas supplier, but this must be placed in the context of a relatively new market in terms of competitive options.

Q9. Respondents are invited to comment on the CER's proposal that the overall criteria taken to define a competitive market are still valid. Outline your reasons for agreement or disagreement.

4.3.2 BG Energy market share

The criterion referring to BG Energy's market share is less certain. It was left open in the Roadmap because of the perceived connection between market share and the use of branding, and the CER left open the possibility of having different criteria depending on whether BG retained its brand or not.

The Roadmap proposed that BG's market share would need to be less than or equal to 60% before the market could be considered to be sufficiently competitive, and so warrant the withdrawal of price regulation. Some stakeholders have noted that this level of market share is considerably higher than would be accepted under European case law as indicating that a market is competitive, and there was a view that 40-50% would be more appropriate. While the CER understands the reasoning behind this proposal, it does not take into account the level of inertia in the residential market, and experience from other jurisdictions indicates that a sizeable proportion of customers will not switch no matter the circumstances. This in itself raises concerns about the nature of competition in retail energy markets going forward, but this will not be dealt with in this paper.

The CER has reviewed the relationship between the retention of the BG brand and market share, particularly in the light of the approach taken in the electricity market deregulation, where different thresholds were set depending on whether ESB retained its brand or not.

The CER considers that there are three main reasons to consider rebranding in the retail gas market. First of all, it may remove any confusion between the wholesale and retail operations. The Consumer Survey found some confusion amongst residential customers about the respective roles of the gas supplier and the distributor, and noted that this confusion was not restricted to customers of any one supplier. The CER notes that customer confusion may have wider implications than influencing the choice of supplier – for example, in customers responding to supply problems. Confusion may not always confer an advantage, and can also reflect badly on a supplier or distributor if the customer mistakenly attributes a problem. The CER notes that the implementation of the EU Third

[18] CER Residential Gas: Market Survey results, July 2012.

Package[19] requires clarity on the roles and responsibilities of all market players, with a view to ensuring that customer confusion is minimised. The CER's view is that concern over customer confusion about the roles of the supplier and the distributor is valid, and the removal of confusion would be met by one of the operations rebranding. In this context, it is not important whether network supply or retail changes: the point is that they have to be clearly differentiated.

The second reason to consider rebranding is if the use of the brand confers an unfair competitive advantage on BG Energy. If the use of the BG brand in retail confers an unfair competitive advantage then there would be an argument for requiring the retail operation to rebrand. Initial discussions with stakeholders revealed very divergent views on the significance of branding. In the CER's view, it is not sufficient to rely on anecdotal evidence on the potential impact of branding, particularly when views are so diverse, and the CER has examined any evidence of customer behaviour or perceptions which could indicate that branding has a negative effect on competition. Consideration of reasons for switching and not switching in the Consumer Survey did not reveal brand-related switching. It is also significant that BG Energy's market share is reducing even without rebranding, and the electricity market followed a similar pattern, where ESB's market share was declining before deregulation, even while it kept its brand.

Ofgem in the UK carried out an empirical review of evidence of the effect of branding on domestic electricity supply. They compared changes in market share before and after re-branding across regions where the energy group was the distributor and where it was not. The aim of the review was to assess whether the group's re-branding had advantaged the supply arm in terms of its ability to acquire and/or keep customers. Ofgem's conclusions were that:

"…evidence appeared to suggest that re-branding had little effect on market share, acquisitions or losses."[20]

In the CER's view, there is limited conclusive evidence that the issue of branding has the potential to restrict, distort or prevent competition in the retail supply of natural gas to residential customers.

The third reason to consider rebranding would be to use rebranding as a mechanism for reducing BG Energy's market share. This reason depends on a level of certainty that branding would achieve that outcome, and arguably, there may be other mechanisms for achieving the same ends. In this context, the CER has considered the timing of any requirement to rebrand. Logic would suggest that if the aim of rebranding is to increase the level of competition in the market

[19] Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1775/2005 on conditions for access to the natural gas transmission networks, Brussels, 19.9.2007 COM(2007) 532 final.

[20] Open Letter on Ofgem's Review Of Branding in the Electricity Distribution and Supply Markets, Ofgem, 27 January 2005

by removing an unfair advantage, then a consequence of rebranding would be a reduction in BG's market share, and so rebranding should be done as soon as possible. This would then bring the market closer to a competitive position.

The CER's preliminary conclusion on branding is that the network and retail operations should be branded differently, to minimise customer confusion. However, it is not clear that the brand confers competitive advantage. BG Energy's market share is declining, and it is therefore difficult to argue in the absence of conclusive evidence to the contrary that BG Energy is unfairly exploiting the use of its brand. If BG Energy's market share continues to fall even if it retains its brand in the retail market, then by definition, the brand is not conferring an undue advantage. The CER does not consider that it would be appropriate at this time to use rebranding as a regulatory tool to drive down BG's retail market share, but notes that should the market fail to become more competitive, rebranding may be an option. It is also recognised that, from BG Energy's point of view, if its aim is to secure the removal of price regulation, it must recognise that the trade-off is a decline in market share. From a regulatory point of view, the objective is a competitive market, and when this is achieved, then the CER will deregulate prices. If a competitive market is not achieved, then prices will not be deregulated.

Q10. Respondents are invited to comment on the CER's analysis of the relationship between branding and market share. Outline your reasons for agreement or disagreement.

4.3.3 Preliminary conclusions on competition criteria

In reviewing the criteria which define the level of competition in the market, the CER's aim in this exercise is to facilitate a competitive market in residential gas supply. It maintains that the definition of a competitive market is that there must be at least three operators, including the incumbent; that at least two of the independent operators must each have a market share in excess of 10%; that there should be a level of customer switching in excess of 10% per annum.

The CER has further considered the level at which the incumbent's market share may indicate that the market is competitive. The Roadmap left this open, in order to review the effect which potential re-branding may be expected to have, but noted that the market could not be considered competitive, under any circumstances, where the incumbent's market share remained above 60%. In this consultation, the CER proposes that it is not conclusive that BG Energy is able to prevent, distort or restrict competition on account of its brand, although it may be able to act in an anti-competitive manner due to other characteristics associated with its dominant position in the market. The CER intends to address the need to minimise customer confusion between the supply and distribution operations, but the CER does not propose to oblige BG Energy to rebrand its retail operation.

In suggesting that the issue of branding may be separate from BG Energy's dominant position, the CER would be removing it as a criterion to be considered in the definition of competitiveness. In addition to the factors on the number of suppliers, independent market shares and switching discussed above, the CER suggests that if its preliminary views on branding are accepted, it is reasonable to define an effectively competitive market, where *ex ante* regulation was no longer required, as one in which BG Energy's market share is less than or equal to 50-55%. This would still be high in competition law terms, but would perhaps reflect the particular characteristics of the residential gas market.

However, if branding is seen as conferring a competitive advantage, then a rebranding exercise could be linked to a higher market share threshold as was done in the electricity market, with the definition of a competitive market including BG Energy's market share somewhere closer to 60%. As was discussed in the competition assessment, consumer research suggests that there is a significantly stronger association in electricity than in gas, in that the association of ESB and "electricity" is much stronger than the association of BG and "gas". This may suggest that, if branding is seen as conferring an unfair advantage, the differential could be lower than the 10% indicated in the electricity market.

Q11. Respondents are invited to comment on the level of BG Energy's market share which, when combined with the other competition criteria, could be considered to define a competitive market. Outline your reasons for agreement or disagreement.

4.4 Regulatory options

4.4.1 Introduction

The review of the criteria which can be taken to determine whether or not the market can be considered to be effectively competitive sets out the thresholds for considering deregulation and the removal of *ex ante* price controls. Some stakeholders have proposed that, in their view, conditions in the market are changing sufficiently quickly to warrant the relaxation if not removal of price regulation. The CER is mindful that there are risks associated with the premature removal of regulation. For example, the removal of price controls could lead to a sustained increase in retail prices to the detriment of consumers, or a strategic decrease in prices by the incumbent, and potentially an increase in the incumbent's market share, to the detriment of market entrants. The CER's view is that for as long as the criteria which are taken to define a competitive market are not met, then the market is not effectively competitive. The CER has stated consistently that where an operator has a market share greater than 60%, this cannot be considered to be a competitive market. This is the case even if there is a belief that the market share target will be met in the short to medium term. In effect, if that were to be the case, early relaxation of regulation could have exactly the opposite effect to what was intended, in that the incumbent's market share would most probably rise. In the CER's view, any relaxation of regulatory requirements would then be counterproductive.

The CER's preliminary conclusion is that, while there is evidence of increasing competition in the market, the criteria are not yet met. Stakeholders expressed a range of views as to when they expected that the criteria may be met, with the shortest estimate being autumn 2013, and the longest being a scepticism that the criteria would ever be met.

4.4.2 Price control options

The CER has concluded that an *ex ante* price control is still required in the residential market, and has considered two main price control options. These are:

- Maintain the current approach
- Introduce a different form of price control

<u>Maintain current approach</u>

The reasoning for maintaining the current approach would be that there is not sufficient change in the market to warrant any change in the regulatory response. BG Energy's market share remains high, but is decreasing as the market becomes more competitive, which would suggest that the current control is having the desired effect.

The CER monitors market trends on a quarterly basis, and believes that this will allow a rapid response to any future changes in market conditions.

<u>Introduce different form of price control</u>

The Roadmap considered whether it was appropriate to move to a form of price cap regulation as an interim step towards deregulation. This would potentially use the existing RCF format, but rather than setting the allowed revenues, it would set a price cap, above which BG Energy would not be allowed to charge. Respondents to the Roadmap consultation were generally not in favour of a price cap control. Objections included concern that BG Energy would price below cost (although their licence prohibits this) and concern that the volatility of the wholesale market would make this form of control too risky. It was this issue in relation to risk – in particular due to the absence of any *ex post* correction factor within a price cap – which led the CER to reject the notion of a price cap as an interim price control measure in the Roadmap.

The CER has considered again the rationale for introducing a new form of price control, and the advantages and disadvantages of such a move. A price cap type arrangement could utilise the current regulatory formula, but instead of using the formula to set the regulated tariff (from which BG Energy is currently not allowed to deviate its pricing – either upwards or downwards) it would instead be utilised by the CER to set a maximum price above which BG Energy would be prohibited to charge. BG Energy would, under such a revised price control arrangement, be allowed some flexibility to set its tariffs below the price capped maximum rate, subject to licence conditions it faces on non-discrimination and below-cost selling as well as general competition law provision regarding anti-competitive pricing practices.

The rationale for allowing a dominant incumbent such as BG Energy additional scope to price more flexibly, while a regulated price control regime remains in place, would be if conditions in the market have not developed sufficiently to indicate that *ex ante* price controls should be removed, but that there has been change which is significant enough to warrant some relaxation of controls.

The CER has considered the extent to which BG Energy is constrained in the gas market by the competition for domestic customers that it faces in both gas and electricity (in particular in the latter). If BG Energy is constrained in this way, then it may be unable to compete on price with other suppliers for dual fuel services given that its gas tariffs remain regulated, and so it would be in the unique position of being the only supplier in gas and electricity not to be able to price flexibly.

Our analysis in Section 3.2.4 suggests that BG Energy does not appear, despite the existing regulatory controls it faces, to be uncompetitive from a price point of view compared to Electric Ireland and Airtricity in the provision of combined gas and electricity services to residential customers. Market share data indicate that BG Energy is losing market share in both the electricity market and for dual fuel customer accounts but there is no obvious pricing-related rationale for this market share loss. We have considered below potential non-price issues in the supply of dual fuel.

If BG Energy is given some flexibility to discount its gas prices, customers could (at least in the short-term) enjoy price reductions that would not otherwise have occurred. However, there is a risk that increased pricing flexibility would have the longer-term unintended consequence of driving the gas market further from a competitive outcome. A price cap would be a significant change to the current regime. It would still guard against the most significant harm associated with market power, that of excessive pricing. BG Energy would still be prevented from setting prices above competitive levels as long as the price cap was in place. It could be argued that, with its market share having fallen from 100% to 70%, the dangers of anti-competitive behaviour designed to harm competitors has fallen, permitting a relaxation of the current control. This would generally be in accordance with the idea that *ex ante* regulatory restrictions should only be used where necessary.

However, having a price cap would not prevent BG Energy from engaging in potentially anti-competitive activity which could limit new entry and expansion and prevent the gas market from becoming fully competitive. This could result in a situation where in several years' time, BG Energy's market share remained around 70% and *ex ante* regulation continued indefinitely. The whole EU Framework on energy would regard this as problematic, as a clear consequence of encouraging a competitive market and providing consumers with the best set of offerings is the removal of as much end-user price regulation as possible.

There are some caveats to this, however. Pricing below cost is usually viewed as most problematic in a context where the competitors are likely to be driven from the market, perhaps because of their relatively small scale. But it could be argued that BG Energy is not particularly large in size compared to its two main dual fuel competitors, and, given both competitors' presence in both gas and electricity, that any BG Energy activity would be unlikely to see either competitor withdraw from, or limit, their activity in these markets. On the other hand, there is at least one gas-only supplier, and there could be future entrants in this segment, and they may be more vulnerable to anti-competitive behaviour by an incumbent.

Looking at how a potential competitive constraint caused by dual fuel affects the price cap proposal, the CER would be interested in respondents' views as to whether, if consumer preference for dual fuel offers strengthens, BG Energy retaining a market share of 70% for the indefinite future is less likely to be a problem. If more consumers choose to buy electricity and gas together in the future, would having a price cap now benefit consumers in the short-run without causing significant long-run damage due to BG Energy being unable to harm consumers or competition even if it retained a high share of the gas market?

Assuming that BG Energy would be seeking to be competitive across both gas and electricity, if it is given greater price flexibility on gas, it could choose to provide lower discounts on the latter in return for greater discounts on the former. In overall terms, it is questionable whether or not consumers would ultimately reap any benefits from the price flexibility being afforded to BG Energy.

The CER has considered whether a price cap control would be effective as an interim measure. Price caps are generally used as a proxy for competition and, in particular, price competition in markets where monopoly conditions of supply continue to prevail.[21] Price caps have only rarely been used as a tool in a market where competition is becoming established and where a clear roadmap towards deregulation has been put in place.

It is also the case that where price caps are introduced, they are generally put in place for a period of years rather than months, with the aim of ensuring that the monopoly supplier has sufficient time to reap the cost efficiencies that it is

[21] An example of the former would be the control of airport landing charges at Dublin airport by the Commission for Aviation Regulation where the DAA remains the monopoly suppliers of this service while an example of the latter would be the use of a retail price cap by the ODTR (now ComReg) for residential fixed telephony services following market liberalisation of that sector in 1998.

incentivised under the price cap to make while end-customers enjoy the price reductions that are built into the ‘CPI/RPI minus X’ price cap formula. This would suggest that none of these well-accepted benefits would accrue under an interim price capping arrangement in the NDM residential gas sector.

At a more technical level, the issue of the inclusion or otherwise of correction factors within the formula used to set a price cap would need to be considered. This issue was discussed at some length in the Roadmap.

In doing so, the CER made it clear that the entire rationale for a price cap was to allow for the abolition of the K/Z correction factors and that their removal could force BG Energy to become more competitive and innovative. Respondents to the Roadmap, notably including BG Energy, opposed a move to a price cap entailing the removal of the K/Z factors due to the additional commercial risks it would as a result face and, as noted above, the CER ultimately rejected the use of a price cap with no correction factors because of these risks.

The CER does not consider that the level of commercial risk is any less than it was when the Roadmap was discussed.

4.4.3 Non-price regulatory options

The CER noted in the competition assessment that the development of dual fuel offerings may have an impact on BG Energy’s market power. If this is the case, there may be alternative and/or additional regulatory options to consider around the way in which gas and electricity services are sold together to customers.

The first point to consider is the extent to which greater clarity is required for customers to be able to judge the offers made by suppliers. The requirement for this is supported by the findings of the consumer survey, which indicated that only around one quarter of those surveyed found it easy or very easy to compare offers, and a similar proportion claimed to understand or fully understand the offers.

The CER could consider requiring all operators to present their offers in a way which would facilitate comparison. The CER proposes that there are benefits to consumers in increasing the transparency of energy offers.

The second point to consider addresses the restrictions on BG Energy in its offers in the gas and electricity markets. It may be that there are alternative or additional non-price measures which could be applied to the provision of dual fuel offers. This could include, for example, measures around discounting a combined dual fuel offer and how such discounts are marketed to customers. Discussion of the price cap option noted that there is at least one supplier selling gas-only products, and changing to a price cap would be problematic for competition in this segment of the market.

However, one possible regulatory option is to retain the essential structure of the current price control but allow BG Energy greater flexibility in dual fuel products. This could entail allowing a discount to be offered by BG Energy in both gas and electricity when sold together. This could see a situation which allowed for competition to continue to develop in gas-only products, and potentially further reduce BG Energy's market share to the point where all *ex ante* controls were removed. However, by adapting the current price control in dual fuel (or bundled offers) it would still retain protection against excessive pricing while allowing greater freedom for BG Energy to compete on equal terms against other suppliers in this segment. Some of the risks associated with below-cost selling would be less of a factor here.

There are issues with this as well, however. First, BG Energy is prevented by its Licence from discriminating between categories of customer, and if BG Energy offered different prices for gas to different consumers, it could be seen as a form of discrimination. Second, although BG Energy's market share could still fall in gas, relaxing constraints in the dual fuel segment could limit scope for this, and there might still be *ex ante* regulation in the gas market for longer than would otherwise be the case. Finally, the evidence presented suggests that BG Energy is already able to offer a competitive "bundle" of electricity and gas, and thus does not seem to be prevented from competing actively for customers who choose to buy gas and electricity together. Relaxing any current constraints should not be done for the purpose of protecting any supplier from the effects of vigorous competition.

4.5 Preliminary conclusions on regulatory options

The CER has considered three main regulatory options:

- Maintain the current approach to price control
- Introduce a different form of price control
- Directly address the issue of dual fuel provision

The eventual choice of option depends on the conclusions of the competition assessment, and particularly on the extent to which dual fuel offers are seen as constraining BG Energy's market power in the residential gas market. If dual fuel offers are not seen as mitigating market power, then there is little rationale for revising the current price control. In this case, providing BG Energy, as the dominant incumbent in gas, with increased price flexibility in gas could put in jeopardy the long-term goal of a competitive market in residential gas, in return for, at most, very limited, short-term gains as well causing considerable disruption to all stakeholders.

However, if dual fuel offers are considered to act as a constraint on BG Energy's market power, then there may be an argument for either modifying the current price control, or for directly addressing the provision of dual fuel offers.

Q12. Respondents are invited to comment on the CER's identification and assessment of three regulatory options. Outline your reasons for agreement or disagreement.

5.0 Conclusions and Next Steps

5.1 Summary

The CER has considered whether the methodology and findings as set out in the Roadmap are still valid. This Consultation Paper contains a number of proposals on which feedback is now being requested. The CER is keen to receive the views of stakeholders with respect to these proposals, the specific questions raised and other issues relevant to the deregulation of the market.

5.2 Next Steps

The CER is requesting responses to this consultation no later than close of business, Friday 16 November 2012 and intends to publish its Decision paper in December 2012.

Appendix A – List of Consultation Questions

Q1. Respondents are invited to comment on the CER's proposal outlined in this section to define a national market for the retail supply of natural gas to Non-Daily Metered residential customers. Are you in favour of this proposal? Outline your reasons for agreement or disagreement.

Q2. Respondents are invited to comment on the CER's proposal that BG Energy's market share is presumptive of dominance, pending the examination of other economic factors. Outline your reasons for agreement or disagreement.

Q3. Respondents are invited to comment on the CER's assessment of wholesale market liquidity. Outline your reasons for agreement or disagreement.

Q4. Respondents are invited to comment on the CER's assessment of economies of scale and of scope. Outline your reasons for agreement or disagreement.

Q5. Respondents are invited to comment on the CER's assessment of the extent to which customer switching constitutes a barrier to entry or expansion. Outline your reasons for agreement or disagreement.

Q6. Respondents are invited to comment on the CER's assessment of the impact of dual fuel offerings on competitive conditions in the retail gas market. Outline your reasons for agreement or disagreement.

Q7. Respondents are invited to comment on the CER's assessment of the significance of branding as a barrier to entry and expansion. Outline your reasons for agreement or disagreement.

Q8. The CER is proposing that BG Energy remains dominant in the relevant product market for the retail supply of natural gas to Non-Daily Metered residential customers, due to its continuing high market share and the absence of factors which would significantly reduce its market power. The CER recognises that dual fuel supply may potentially mitigate market power to some extent. Respondents are invited to comment. Outline your reasons for agreement or disagreement.

Q9. Respondents are invited to comment on the CER's proposal that the overall criteria taken to define a competitive market are still valid. Outline your reasons for agreement or disagreement.

Q10. Respondents are invited to comment on the CER's analysis of the relationship between branding and market share. Outline your reasons for agreement or disagreement.

Q11. Respondents are invited to comment on the level of BG Energy's market share which, when combined with the other competition criteria, could be considered to define a competitive market. Outline your reasons for agreement or disagreement.

Q12. Respondents are invited to comment on the CER's identification and assessment of three regulatory options. Outline your reasons for agreement or disagreement.