



Response to

CER Consultation Paper on Market Monitoring in the

Electricity & Gas Retail Markets

(CER-11-221)

10 February 2012

Introduction

Legislative requirements arising from the 3rd Energy Package do indeed place an obligation on national regulators such as the CER to obtain effective monitoring of their retail energy markets; that remit is unequivocal and not in question. As a key participant in the electricity and gas markets in Ireland, Airtricity will most definitely draw assurance from a mechanism that comprehensively demonstrates that the retail energy markets are functioning effectively. Such a mechanism will in all likelihood have most, if not all, of the indicators outlined in the ERGEG Guidelines of Good Practice on Indicators for Retail Market Monitoring for Electricity and Gas. However identifying indicators is one thing; developing the monitoring framework in detail and implementing such are entirely different matters.

We have a number of significant concerns with the retail energy markets monitoring mechanism proposal. These concerns fall broadly into two categories – procedural and substantive. In the first category, given the level and extent of market monitoring envisaged by CER which will introduce a substantial, permanent regulatory intervention into the retail energy markets, the consultative process, in our view, is particularly deficient. With the high granular level of information requirements, it is pertinent that the consultative process should have been structured with sufficient engagement sessions with the primary impacted entities to examine in equally granular detail, the import of the proposals. It is our contention that the greater the extent of a proposed intervention the greater the onus to ensure that in all aspects the proposal satisfies the grounds for its establishment.

In addition, we view the lack of a regulatory impact assessment as further evidence to the insufficiency of the consultative process.

On substantive matters, we question the proposal on two general issues: the necessity of such extensive and highly granular information requirements; and the necessity for requesting specific commercially sensitive information.

In addition we wish to highlight that we have contributed to the submission response of the National Electricity Association of Ireland (NEAI) and as such subscribe to the position taken in that submission as well.

On the Consultative Process

The consultative process for the market monitoring consultation, signalled by the publication of the consultation paper on 16th December 2011, has involved a single session workshop, which functionally has only served as a different medium to communicate the contents already outlined in the consultation. With both the extent and the granularity of information requirements proposed for the monitoring mechanism, we have deep reservations over the lack of a corollary depth in examining the details of the proposal.

The process could benefit from improvements in a number of areas. For example, a two-stage process, starting with a paper outlining the remit to monitor the markets and the range of options under consideration could have been used to signal to industry to engage on the issue, with a second stage consultation to refine the proposals following.

Regarding the workshop, an alternative format involving multiple subject-specific sessions and iteration would have been much more helpful in sufficiently examining the elements of the proposal in detail. For example, a workshop day broken into an initial general session, followed by distinct sessions, perhaps four in line with the ERGEG GGP retail market metrics themes, addressing related elements of the proposal and allowing sufficient pauses interspaced to enable discussion would have been useful to identify issues, some addressable within the workshop sessions and others for further offsite considerations. In addition a subsequent refinement workshop would have been a useful follow-on to close out issues identified and re-workings that may have been required.

In summary with the 'single-shot' opportunity allowed to comprehend the proposal and to raise concerns, this consultative process has become overloaded and insufficient to properly work out genuine concerns. On this basis, we would recommend an extension to the consultative process, with at least one full format workshop organised to go through the elements of the proposal.

In addition, we would request that a regulatory impact assessment be carried out to assess the impacts of the various aspects of the proposal on the primary stakeholders.

On Substantive Issues

On more substantive aspects of the consultation, we have a general concern regarding the necessity of all the information required by CER, as well the granularity required for some of them. Without a clear understanding of the benefit each required indicator is supposed to contribute to the overall 'health monitoring' of the retail markets, it is hard to justify the requirements. The mere ability to identify lots of indicators should not automatically lead to a view that all such indicators should be implemented.

Having reviewed the elements of the proposal to some limited degree, the extent and granularity of the information requirements will pose an undue burden on our resources – both in terms of personnel as well as in systems.

Furthermore, some of the requirements are for information that we would consider commercially sensitive. In particular are the information requirements for retail margins and arrears. Being part of a public limited company, restrictions apply on the nature and timing of information we can release. Reporting on such information and in such detail as proposed within the monitoring mechanism could potentially result in putting not just Airtricity Ltd, but also the SSE group, into a commercially disadvantaged position, as well as into contractual breaches. This strengthens our view that while the CER needs to fulfil its monitoring functions, sufficient time and a suitable consultative process needs to be put into place to examine all the aspects of these proposals.

And again we will reiterate our call for a full regulatory impact assessment to be conducted to determine the full impact of each specific proposal on the primary stakeholders.