



## **Re: Market Monitoring in the Electricity & Gas Retail Markets – CER/11/221**

Endesa Ireland welcomes the opportunity to respond to the CER's consultation on *Market Monitoring in the Electricity & Gas Retail Markets CER/11/221*.

At the outset, Endesa Ireland is concerned by the CER's statement in section 3.1 of this document that, as a result of deregulation *'the CER is no longer receiving the same level of market information from the incumbent suppliers as it did as part of the tariff setting process. In order for the CER to meet the new legislative requirements and to overcome the reduction in market information a new framework, with information from all suppliers and both electricity and gas networks is required'*. Endesa Ireland considers it to be an inevitable consequence of deregulation that the regulator 'steps back' and allows the competitive market to function; it should not be presumed that the CER should still receive the same level of information, or that it needs to. Ironically, the proposals made in this consultation paper would see a heavier burden on suppliers than when the market was regulated. The proposals made in this Consultation Paper seem reminiscent of a fully regulated retail sector with price control and regulated tariffs where profit margins are fixed, but guaranteed. Rather, Endesa Ireland considers that the Regulator should only receive information that is relevant and appropriate, to require more than this imposes an undue burden on suppliers and acts as a barrier to entry.

Endesa Ireland notes that under s9BD of the Electricity Regulation Act 1999, the CER's actions must be *'transparent, accountable, proportionate, consistent and targeted only at cases where action is needed'*. Endesa Ireland does not believe that the proposals contained in this paper are proportionate or that it has been shown that the proposal is targeted at cases where action is needed. In fact, the CER has been very positive about the 'success' of the retail market and state of competition in the Irish market; the Commission signalled in the Roadmap to Deregulation Decision Paper that it would review certain indicators and also stated that it would take a 'light handed' approach, this does not seem to be consistent with the approach currently proposed by the CER.<sup>1</sup>

For the reasons set out in this response, Endesa Ireland considers that the proposals are disproportionate and that a sufficient case has not been made that action is needed.

Endesa Ireland notes the CER's reliance on Article 36(g) of Directive 2009/72/EC as basis for the proposals made in this paper. That Article provides that the regulatory authority has the objective of *'ensuring that customers benefit through the efficient functioning of their national market, promoting effective competition and helping ensure consumer protection'*.

Directive 2009/72/EC continues at Article 37 to specify that RAs will have the duty of

*"monitoring the level and effectiveness of market opening and competition at wholesale and retail levels, including on electricity exchanges, prices for household customers including prepayment systems, switching rates, disconnection rates, charges for the execution of maintenance services and complaints by household customers, as well as*

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<sup>1</sup> CER/10/058 p4 - <http://www.cer.ie/en/electricity-retail-market-current-consultations.aspx?article=df783f6c-1e9f-436e-a2e0-d89edf4daa9b>



*any distortion or restriction of competition, including providing any relevant information, and bringing any relevant cases to the competition authorities'*

Endesa Ireland considers that this Article is instructive in that it provides guidance as to the information that the RAs should seek. The Directive limits this to monitoring the prices for *household* customers, and information such as switching and disconnection rates, which are already captured and reported on by the CER. Endesa Ireland considers that the CER should limit its information requirements to these elements; if a problem becomes apparent then the CER could consider requiring further information on a case-by-case basis.

This Directive has been transposed in Ireland by means of SI 450/2010 which provides, *inter alia*, that the CER should monitor '*whether the development and operation of competition in the supply of electricity is benefitting final customers*'. SI 450/2010 also lists a number of metrics which the CER should monitor, reflecting those set out in Article 37 of Directive 2009/72EC

In summary, Endesa Ireland accepts that the CER does have a duty to monitor that competition is benefitting customers, but considers that its proposed interpretation of this duty as requiring all of the information set out in this consultation paper is inconsistent with the legislation.

ERGEG has developed indicators in its *Guidelines of Good Practice on Indicators for Retail Market Monitoring for Electricity and Gas (GGP)* order to give comprehensive guidance to regulators on how to fulfil their duties under the 3<sup>rd</sup> Package. These Guidelines were stated to establish 'areas for retail market monitoring and suggested indicators, which include but are not restricted to requirements under the 3<sup>rd</sup> Package'. If the ERGEG suggested indicators are above the standard set in the 3<sup>rd</sup> package, by going beyond the indicators suggested in the GGP, CER is going much further than European Regulators' joint position on the degree of monitoring required by the 3<sup>rd</sup> Package.

The fact that the information CER is seeking is beyond those considered necessary by the European Regulators supports Endesa Ireland's view that additional reporting proposals made by CER are excessive. In imposing higher requirements than the agreed EU indicators, these requirements may constitute a barrier to market entry. In particular, Endesa Ireland would note that ERGEG's indicators are limited to household customers (although it is stated that regulators may extend them to small and medium-sized businesses). Endesa Ireland considers that CER should not extend the indicators beyond household customers, at least in the initial stages, and points out that ERGEG did not conceive that these would be extended to large energy users, as proposed by CER.

#### *Ofgem*

Reference is made in the consultation paper to procedures undertaken by Ofgem. Endesa Ireland would point out that these steps were taken by Ofgem in response to an identified problem as part of its Energy Supply Probe. In addition, the request of information by Ofgem followed an in-depth consultation process with suppliers.

The consultation paper states that the outcome of the Supply Probe is that suppliers publish separate regulatory accounts for their wholesale and retail businesses; Irish suppliers are



already required to submit accounts under their supply licences. In addition, it is stated that the supply probe gave Ofgem information on hedging strategies by the large suppliers in GB, which it uses to *estimate* supplier margins on a typical bill; the CER is going much further than this in proposing to require suppliers to submit their actual hedging positions and the *actual* margin.

#### *Confidentiality*

Endesa Ireland notes the statement in ERGEG's GGP that 'it is anticipated that data would generally be published on an aggregated basis, ie no one market participant would be named. Notwithstanding this, ERGEG recognises that individual Member States and ACER reserve the right to publish more granular data as long as the agreement under which it was collected is adhered to.'

Endesa Ireland agrees with the ERGEG presumption that information would be published in an aggregated format. In addition, it is noted that ERGEG suppose a framework whereby there is an agreement for collection of data. Endesa Ireland considers that such an agreement should be developed between the CER and market participants, with full consideration of issues affecting all parties and consumers. Publication of a particular participant's information should occur only where clear benefit can be shown, and no injury suffered by the participant in question.

Endesa Ireland considers that much of the information proposed to be sought under this consultation is confidential and commercially sensitive, particularly around customer arrears and supplier margin. In addition, the prevalence of customer debt and quantum of supplier margin are not indicators of how competition is faring, nor of whether customers are benefitting from competition. In these circumstances, Endesa Ireland does not consider that CER has justified their position for proposing that this information be collected from suppliers.

Endesa Ireland is concerned that even if the CER does not intend to publish all of the information requested, that it could be the subject of a Freedom of Information request and could become public in that way. Endesa Ireland is also concerned that there is always the possibility that the CER staff could come to work in the supply business in future years, and information may be transmitted between different suppliers in this way. Endesa Ireland requests that CER look to ensure the confidentiality of data by including a provision that CER staff with access to this information are obliged to wait at least one year before accepting employment with a licensed supplier.

It is stated in the consultation paper that the CER can assist the future development of market competition by increasing market information and transparency, through the publication of market metrics. Endesa Ireland agrees with this statement to some degree but cautions that the CER must respect that certain information is confidential and should not be published.

The publication of commercially sensitive data could in fact have a negative effect on competition, as competitors would not be willing to enter the market with these requirements in situ. In addition, many commercial contracts CfDs, fuel and other commodities contain confidentiality clauses which prohibit the disclosure of this information; it is considered that the contents of particular contracts might be inferred from the information sought by the CER. We

also consider that potential counterparties would be deterred by conditions allowing publication of this information as it would release information which they consider commercially sensitive and which may impact on their relationships and negotiations with other parties. We feel that this may reduce contracting options and negotiating options for SEM market participants which would have negative consequences for SEM customers and market participants. For these reasons, Endesa Ireland considers that this information for existing contracts should not be published under any circumstances.

Endesa Ireland refers to Article 30 of Directive 2009/72/EC concerning common rules for the internal market in electricity which states that:

*Right of access to accounts*

*1. Member States or any competent authority they designate, including the regulatory authorities referred to in Article 35, shall, insofar as necessary to carry out their functions, have right of access to the accounts of electricity undertakings as set out in Article 31.*

*2. Member States and any designated competent authority, including the regulatory authorities, shall preserve the confidentiality of commercially sensitive information. Member States may provide for the disclosure of such information where this is necessary in order for the competent authorities to carry out their functions.*

Endesa Ireland considers that the publication of the level of information proposed by the RAs may be damaging to competition. In this regard we refer to the European Commission's consultation on Guidelines of Fundamental Electricity Data Transparency<sup>2</sup> which states that 'transparency can, in particular on concentrated markets, also facilitate anti-competitive behaviour'. In particular, this document makes reference to the European Commission's *Guidelines on horizontal co-operation agreements*<sup>3</sup>, which states:

58. However, the exchange of market information may also lead to restrictions of competition in particular in situations where it is liable to enable undertakings to be aware of market strategies of their competitors ( 2 ). The competitive outcome of information exchange depends on the characteristics of the market in which it takes place (such as concentration, transparency, stability, symmetry, complexity etc.) as well as on the type of information that is exchanged, which may modify the relevant market environment towards one liable to coordination<sup>4</sup>.

Endesa Ireland considers that this type of restriction of competition is a real danger under the proposals of the RAs and for this reason must not be implemented. We are convinced that the information which the RAs are considering publishing would enable undertakings to be aware of their competitors' market strategies.

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<sup>2</sup> [http://ec.europa.eu/energy/gas\\_electricity/consultations/20110916\\_electricity\\_en.htm](http://ec.europa.eu/energy/gas_electricity/consultations/20110916_electricity_en.htm)

<sup>3</sup> Official Journal 2011/C 11/01 - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:011:0001:0072:EN:PDF>

<sup>4</sup> This principle was also established in Case C-7/95 P, *John Deere*, paragraph 88.



*Burden on Suppliers*

Endesa Ireland considers that the proposals made in this paper will impose an undue burden on suppliers. It is not necessarily the case that suppliers already record the information which it is proposed to seek under this consultation broken down according to DG group or by Eurostat band. To produce the information sought in this format will put a large administrative burden on suppliers, which will result in costs which will inevitably be borne by customers.

This burden will include, for example changes in IT systems and introduction of processes to attribute CfDs or gas purchases to particular customer categories. If different methodologies are chosen by different suppliers Endesa Ireland submits that the information submitted would be meaningless and not useful for the purpose of comparison.

In circumstances where the benefits of the proposals made by the CER have not been shown, Endesa Ireland does not believe that the imposition of burden and costs on suppliers and customers is justified.

**Question 1 – Respondents are invited to comment on the three options presented for electricity market segments? Respondents are also invited to suggest alternative market categories.**

Endesa Ireland is neutral as to which customer categories is used but considers that this data should be aggregated by ESB Networks systems so that suppliers do not have to re-process information they receive from the MRSO.

It may be that a ‘rule of thumb conversion’ two categories are used for some time so as to enable comparison with historic figures but Endesa Ireland does not consider that this burden should fall upon suppliers as it would impose excessive time and resource costs.

If there is to be a change to the Eurostat figures Endesa Ireland considers that the CER should give all participants sufficient time to make this transition.

It may be difficult to divide customer information by categories based on consumption where consumption is not known until after the year in question.

The proposal that both categories be used is not pragmatic as it would hugely increase the burden on the DSO and suppliers.

**Question 2 – Respondents are invited to comment on the three options presented for gas market segments. Respondents are also invited to suggest alternative market categories.**

Endesa Ireland considers that the same principles put forward for Question 1 should apply to the gas market.

**Question 3 – Respondents are invited to comment on whether the indicators outlined for measuring switching rates are sufficient and, if not, what other methodology could be used?**

Endesa Ireland considers that the indicators outlined are sufficient and should continue to be supplied to CER by the MRSO and GPRO.

<p>Endesa Ireland notes that the ERGEG GGP proposes a much more aggregated approach, whereby the number of switches per household customers as a percentage of customer numbers is recorded, but considers that the CER proposals on measuring switching rates are reasonable.</p>
<p><b>Question 4 – Respondents are invited to comment on whether the indicators outlined for measuring delays in the switching process are sufficient and, if not, what other methodology could be used?</b></p>
<p>Endesa Ireland considers that the indicators outlined for measuring delays in the switching process are sufficient and that data should be provided by the DSOs to the CER. Endesa Ireland would like for the reasons for delayed switch to be recorded. However, Endesa Ireland is not convinced that categorising delayed switches by supplier is helpful, the supplier is not responsible for effecting a switch and it may be prejudicial to group delayed switches in this way as responsibility for the delay may be inferred to the supplier.</p> <p>Endesa Ireland does not consider that Suppliers should be asked to provide information on customers who have informed them, as new supplier, of their desire to switch. It is not a requirement for customers to provide this information and therefore will not result in meaningful metrics.</p>
<p><b>Question 5 – Respondents are invited to comment on whether the indicators outlined for measuring failed switches are sufficient and if not, what other methodology could be used?</b></p>
<p>Endesa Ireland welcomes the indicators outlined for measuring failed switches and also suggests that an attempt be made to collect reasons for those failed switches. In addition, information on those customers’ subsequent applications to switch would be useful – this would show if an initial failure to switch discourages customers from following through with their request.</p> <p>As stated in response to Question 5, Endesa Ireland is not convinced that categorising failed switches by supplier is helpful, the supplier is not responsible for effecting a switch and it may be prejudicial to group failed switches in this way as responsibility for the failure may be inferred to the supplier.</p>
<p><b>Question 6 – Respondents are invited to comment on the proposals outlined for measuring renegotiations. Is there any other methodology that could be used?</b></p>
<p>Endesa Ireland considers that this proposal should be limited to household customers, as provided for in the ERGEG GGP. Otherwise Endesa Ireland is content with the proposals outlined for measuring contract renegotiations, expired contracts and customers defaulting to standard tariffs.</p>
<p><b>Question 7 – Respondents are invited to comment on whether the proposals to monitor connections as part of the DSO performance report are sufficient. If not, what value would more regular monitoring of connections provide</b></p>
<p>Endesa Ireland welcomes this requirement to report on average time for connections to be completed and the range of time for connections. Endesa Ireland suggests that the total number of connections be recorded it would also be of interest to collect data on the time taken for reconnections of existing points and number of such reconnections.</p> <p>Endesa Ireland considers that annual monitoring is sufficient.</p>
<p><b>Question 8 – Respondents are invited to comment on whether the proposals to monitor</b></p>

<p><b>repairs through the annual reporting of CMLs and CIs for electricity and gas supply restoration are sufficient. If not what value would more regular monitoring provide?</b></p>
<p>Endesa Ireland agrees with the proposal for this monitoring to be carried out on an annual basis.</p>
<p><b>Question 9 – Respondents are invited to comment on whether the proposals outlined for monitoring disconnections are sufficient. What additional information on disconnections do respondents consider would be worth publishing?</b></p>
<p>Endesa Ireland does not consider it necessary to publish disconnection number by supplier as long as the Disconnection Code of Practice has been followed, it is not relevant what suppliers have disconnected customers. The ERGEG GGP provides that the DSOs should report on the total and relative number of disconnections, divided into those requested by suppliers and DSOs; dividing disconnections by supplier is not suggested in the ERGEG GGP.</p>
<p>We would welcome clarification on what is meant by ‘disconnection categories’.</p>
<p><b>Question 10 – Respondents are invited to comment on whether the proposals outlined for measuring debt flagging are sufficient. Is there any other related information that the CER should consider including in its monitoring framework?</b></p>
<p>Endesa Ireland considers that debt flagging should not be recorded by supplier as this information is commercially sensitive; it follows that Endesa Ireland does not believe that this information should be published under any circumstances. Where there are small number of customers in a certain category publication of this information may also breach customers’ confidentiality requirements as they may be identifiable.</p>
<p><b>Question 11 – Respondents are invited to comment on whether the level of detail on market share currently shown in the CER’s quarterly reports is sufficient. If not, please state what additional information should be provided.</b></p>
<p><b>Question 12 – Respondents are invited to comment on the proposal to include a list of active suppliers in each market segment.</b></p>
<p>Endesa Ireland considers that the level of detail shown in current quarterly reports is sufficient.</p> <p>Endesa Ireland welcomes the proposal to include a list of active suppliers in each market segment. We query CER’s request for suppliers to inform the CER when it becomes active in a new market segment. Suppliers must complete a market assurance process in order to supply customers in particular market segments. CER is notified by the Assurance Body of the outcomes of the assurance process. This should be sufficient indication to CER. In addition, the information provided by the DSO will show the suppliers that have customers in each segment. Endesa Ireland does not consider that a further reporting requirement is justified.</p>
<p><b>Question 13 - Respondents are invited to comment on whether the two measures of market concentration are the most appropriate for the Irish market. If not, what other approaches should be used?</b></p>
<p>Endesa Ireland considers the Herfindahl-Hirschman Index (HHI) and Concentration Ratio (CR) are appropriate to assess market concentration, and notes that this is in line with ERGEG’s GGP.</p>
<p><b>Question 14 – Respondents are invited to comment on whether the proposals for retail margins are sufficient. Is the proposal outlined above sufficient? If not, what other approaches should be used?</b></p>

Endesa Ireland considers that the proposals set out as regards retail margin are excessive and inappropriate. Endesa Ireland submits that the CER have not demonstrated that it is empowered to request or publish this information.

Endesa Ireland notes that ERGEG's GGP proposes that the most common or average offer to the **typical household customer** be used as an indicator; the typical customer should be defined by the national regulator and national regulators may decide that vulnerable customers or prepayment customers be assessed separately. ERGEG also states that if retail margins are to be assessed, this could be done based on typical household end user prices and wholesale price. As the SEM wholesale price is known, Endesa Ireland suggests that this approach is very suitable for adoption in Ireland; in addition, household tariffs can be obtained from suppliers' promotional material or websites. It can thus be seen that the CER's proposal far exceeds ERGEG's recommendation.

Endesa Ireland submits that in fact it does not assess its margins by customer category in the manner supposed by CER, it does not attribute particular generation or supply costs to a particular category of customer. Therefore the completion of the table proposed by CER would require a change in financial practices and may not align with the view Endesa Ireland takes of its business.

Endesa Ireland argues that the ERGEG indicator be adopted in Ireland, as discussed above this standard is considered sufficient to fulfil regulators' duties under the 3<sup>rd</sup> package.

Endesa Ireland highlights that electricity suppliers must already submit accounts to the CER and this shows profitability; this requirement should be extended to gas suppliers. Reference is made in the consultation paper to supply reports published by Ofgem; Endesa Ireland considers that the crucial difference between this and the CER's proposal is that Ofgem's report is based on expected costs and margins based on standard tariffs and wholesale costs. This should be an even more appropriate approach in the SEM where the wholesale price is clear.

Endesa Ireland considers that the CER should not publish any information on retail margins, even if in aggregated form, as this information is commercially sensitive to suppliers. As discussed above, Endesa Ireland is concerned that even where the CER does not publish such information, it could be the subject of a freedom of information request which poses a risk for suppliers.

**Question 15 – Respondents are invited to comment on whether the proposals for monitoring the diversity of tariffs and contracts are sufficient. If not, please state what additional measures should be undertaken?**

Endesa Ireland considers that for the household market the CER should be able to obtain this information from suppliers' promotional material or websites, as suggested by ERGEG. We question whether, if the CER amends the supply licence to include a duty to supply and a supplier of last resort duty, customers that are being supplied under these duties constitute separate categories, both in terms of contract terms and tariff offered.

Endesa Ireland notes that the corresponding ERGEG recommendation on this subject is restricted to household customers and considers that the CER follow this approach. We

consider that this proposal is unworkable for non-household customers as tariffs and contracts are tailored in order to meet customer's specific requirements and characteristics, and may well be variable. In addition, for a small or new supplier, it may be possible to infer the price a particular customer pays for its electricity, which would be unfair to that customer and to the supplier and may compromise their commercial position.

Further, the ERGEG indicators propose that the number of tariffs be monitored, this does not include the number of customers or type of customers on each tariff. Endesa Ireland submits that the CER follow this approach and points out that the information which the CER propose to seek would impose a large administrative burden on suppliers.

**Question 16 – Respondents are invited to comment on whether the proposals for monitoring end user prices are sufficient. If not, please state what additional measures should be undertaken.**

Endesa Ireland considers that the proposals made by the CER are excessive, and by requesting customer numbers, demand and revenue by customer category are out of step with the ERGEG indicators. As stated above, ERGEG propose that the regulator define the typical household customer and that the average or most common price paid by this type of customer would be used for the purposes of analysing end user price.

Endesa Ireland considers, for reasons outlined above, that the CER should adopt ERGEG's GGP, which we note is confined to household customers; this allows the CER to monitor groups such as vulnerable customers and prepay customers separately.

**Question 17 – Respondents are invited to comment on whether the proposals for monitoring the spread price are sufficient. If not, please state what additional measures should be taken.**

Endesa Ireland considers that this proposal is in accordance with the ERGEG GGP.

**Question 18 – Respondents are invited to comment on whether the proposals outlined for measuring arrears are sufficient. Is there any other related information that the CER should consider including in its monitoring framework?**

Endesa Ireland considers that the CER's proposals regarding the measurement of arrears are inappropriate. These figures are commercially sensitive to suppliers and for the reasons set out above should not be collected or published. Publication could have a seriously damaging impact on suppliers.

The publication of these figures may also cause confidentiality or commercial sensitivity concerns for customers, as there may be circumstances where the customer in question can be inferred.

Endesa Ireland considers that this information may be damaging to the value of companies in question and may have adverse impacts on the cost of capital, both of which are damaging to the whole market.

Endesa Ireland notes that this is not included in ERGEG's indicators and for this reason doubts that it is supported by the 3<sup>rd</sup> package.

**Question 19 – Respondents are invited to comment on whether the proposals outlined**

<p><b>for measuring penalty clauses are sufficient. Is there any other related information that the CER should consider including in its monitoring framework?</b></p>
<p>Endesa Ireland does not consider it appropriate that the CER monitor the number and value of penalty clauses activated; CER has not set out what value would be gained by publishing this information. These clauses are included in customer contracts at the outset; customer failure to meet contract terms is not reflective of the supplier and should not be associated with a supplier. This data could be misinterpreted and may result in suppliers being less willing to contract with customers with questionable financial ratings.</p> <p>As this indicator is not included in ERGEG's GGP Endesa Ireland does not consider that it is supported by the 3<sup>rd</sup> Package. In addition, this proposal casts doubt over the concept of freedom to contract as it intends to form a judgment as to whether customers 'are entering into unsuitable contracts'.</p>
<p><b>Question 20 – Respondents are invited to comment on whether the proposals for monitoring customer complaints are sufficient. If not please state what measures should be undertaken?</b></p>
<p>Endesa Ireland considers that the proposals for monitoring customer complaints impose a burden on suppliers but accept that this is included in ERGEG's GGP and should be implemented.</p>
<p><b>Question 21 – Respondents are invited to comment on whether the proposals for monitoring customer enquiries are sufficient. If not please state what additional measures should be undertaken.</b></p>
<p>Endesa Ireland considers that this proposal will impose a huge administrative burden on suppliers. It is accepted that the ERGEG indicators do include customer complaints but we suggest that this is conceived to be at a lower level of detail. Recording enquiries by customer category and requiring monthly reporting is considered to be excessive.</p> <p>In fact, this is likely to become an inconvenience for customers, as in order to ask a simple question they will be required to give a plethora of information for recording purposes.</p>
<p><b>Question 22 – Respondents are invited to comment on whether any of the potential areas for market monitoring set out in Section 9 would be of particular value.</b></p>
<p>Endesa Ireland considers that the areas set out in Section 9 are of interest to the market but does not consider it necessary to monitor them specifically.</p>
<p><b>Question 23 – Respondents are invited to comment on whether the reporting frequency and the requirements for initial submissions are sufficient, insufficient or excessive? Is there an alternative set of timelines that the CER should consider for collecting data?</b></p>
<p>Endesa Ireland considers that it is unrealistic that the data proposed by the CER could be submitted one month after Q2 2012. Endesa Ireland considers that the CER should form a stakeholder group to discuss this issue and the practical limitations of compiling the information. From that group, a phased timetable can be developed.</p>
<p><b>Question 24 – Respondents are invited to comment on whether the de minimis threshold is reasonable. Is there any other approach the CER should consider for setting the de minimis threshold for reporting?</b></p>
<p>Endesa Ireland considers it reasonable that there be a de minimis threshold but considers that it should be substantially higher. A threshold of 10% in the particular market segment would be more effective and would enable a new entrant to grow its business without the burden of reporting. It would also reflect the fact that companies under this threshold will not normally</p>

be subject to competition law provisions.

**Question 25 – Respondents are invited to comment on whether the reporting form accompanying this document is clear and easy to understand. Is there any other approach that the CER should consider for collecting data.**

Endesa Ireland is not clear what reporting form is referred to but considers that the format of any reporting should be worked out with respondents in the stakeholder group referred to above.

**Publication of Data**

As discussed above, Endesa Ireland is very concerned about the publication of commercially sensitive data. It should be very clearly set out in advance, following discussion with market participants, what data will be published.

If the CER introduces changes as proposed regarding a duty to supply and duty of supplier of last resort, Endesa Ireland considers that monitoring carried out by CER must acknowledge any customers served under these duties. Also, as Electric Ireland is currently serving customers under two licences (PES and generic licence) and as the PES is a ringfenced entity, Endesa Ireland considers that figures for these two scenarios should be collected separately.

Due to the seriousness of the proposals made in this consultation paper, Endesa Ireland considers that a draft determination should be made by the Commission ahead of reaching a final decision, in order to allow participants to consider any further issues raised.