



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

Review of the Natural Gas Supply Licence

DOCUMENT TYPE:	Consultation Paper
REFERENCE:	CER/13/220
DATE PUBLISHED	27 September 2013
CLOSING DATE	29 October 2013
QUERIES TO:	dparaschiv@cer.ie



Commission for Energy Regulation

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CER Information Page

Abstract: The CER is consulting on proposed modifications to the natural gas supply licence granted by the CER under Section 16 of the Gas (Interim) (Regulation) Act, 2002. The modifications take into account developments in competition and the transition to full deregulation of the natural gas retail market. The proposed modifications are discussed in this document and highlighted in the supply licences published alongside it. These documents should be read in conjunction with one another.

Target Audience:

This consultation paper is for the attention of current holders of a natural gas supply licence granted by the CER, those intending to apply for such a licence to facilitate the supply of natural gas to final customers, industry participants, the general public and all interested parties.

Responding to this paper:

Responses to this consultation should be returned by email, post or fax and marked for the attention of Dana Paraschiv at the Commission for Energy Regulation, The Exchange, Belgard Square North, Tallaght, Dublin 24.

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

Related Documents:

CER/13/123	Review of the Regulatory Framework for the Domestic NDM Retail Gas Market
CER/13/177	NDM Domestic Gas Market Competition Review August 2013
CER/13/096	Review of Non-Daily Metered Retail Gas Market
CER/12/164	Review of Non-Daily Metered Retail Gas Market
CER/12/018	Review of Electricity and Natural Gas Supply Licences
CER/11/817	Natural Gas Supply Licence
CER/11/071	Gas Roadmap Decision Document

For further information on this Consultation Paper, please contact Dana Paraschiv (dparaschiv@cer.ie) at the CER.

Executive Summary

The CER is responsible for licensing the supply of natural gas to final customers under Section 16 of the Gas (Interim) (Regulation) Act, 2002. The last review of the natural gas supply licence was conducted in 2012 and was focused on changes to reflect new legislation, regulatory decisions and market developments in both the electricity and gas retail markets. At that time, the gas business retail markets had been deregulated but the criteria for deregulation of the domestic market had yet to be set. Since then, given the continued development of competition, the CER detailed, in its review of the NDM retail gas market ([CER/13/096](#)), the criteria for deregulation of the domestic market. According to this decision, deregulation of Bord Gáis Energy in the domestic gas retail market will occur if the following criteria are met:

- At least 3 suppliers, of which 2 are non-Bord Gais Energy suppliers
- Each of the 2 non-Bord Gais Energy suppliers have a market share in excess of 10%
- Customer switching rates exceed 10% per annum
- Bord Gais Energy market share threshold for de-regulation was set at 60% if BGE decided to re-brand its retail business and 55% if it decided to retain the brand

With these criteria now established and in anticipation of full deregulation of the gas retail markets, the CER has reviewed the gas supply licence. This document sets out the proposed changes to the current licence and the rationale for them. The aim is to ensure an as even as possible playing field for all suppliers to foster the development of competition to the benefit of the customer, while ensuring customers are effectively protected.

Deregulation is a step recognised and promoted by ERGEG¹ to further effective competition and one that should deliver real benefits for consumers. The transition to the deregulated market does not signal the end of retail market regulation but will see a change in the regulatory framework from one of ex-ante to ex-post regulation. This new ex-post regime will see a much stronger role for market monitoring and this is underpinned by European legislation in the 3rd Package, the provisions of which have been transposed into national legislation. The CER will take measured action where market monitoring indicates that action is required to ensure competition is neither distorted nor restricted and that customers are benefiting from competition.

To align with this shift from ex-ante controls to ex-post regulation, the CER is proposing to remove the following licence conditions from the natural gas supply licence upon deregulation of the domestic gas retail market:

- Condition 23 – Purchasing of natural gas,
- Condition 24 – Terms of supply to customers, and;
- Condition 29 – Duty of non-discrimination.

¹ European Regulators Group for Electricity and Gas, Status Review of End-User Price Regulation as of 1 January 2010

http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Customers/Tab1/E10-CEM-34-03_price%20regulation_8-Sept-2010.pdf

In addition, the CER is proposing that the following conditions be removed where the network companies are certified as having achieved full ownership unbundling:

- Condition 26 – Ring-fencing of the shipping and supply business and restriction on use of certain information,
- Condition 27 – Compliance Officer, and;
- Condition 28 – Prohibition of cross-subsidisation.

Taking account of the need to establish a fairer method of ensuring universal service for customers in a competitive market than the designation of a single supplier, the CER is also proposing that a duty to offer supply be introduced in all natural gas supply licences. This duty would pertain to domestic and I&C business customers. The proposed licence condition specifies certain instances where requests for supply are not reasonable. It also provides for the CER to determine whether other requests are reasonable or not. Under paragraph 3(f) of the relevant licence, the CER deems the following instances as unreasonable:

- Where a customer is debt flagged, and;
- Where the supplier is not actively supplying the market of the customer requesting the supply.

The CER considers that the above should provide sufficient guidance to determine, in the majority of cases, whether a request is reasonable. However, if questions should still arise, a mechanism for seeking clarity is detailed in the licence condition. This proposal does not see any change to the duty to offer supply placed on Bord Gáis Energy. With the adoption of this proposal the CER would monitor how suppliers discharge their obligations and the tariffs offered. The CER is also proposing to introduce a condition requiring all suppliers to produce regulatory accounts.

The above proposals see the conditions applicable to the incumbent being further aligned with those of all suppliers. With the proposed extent of this alignment it is deemed no longer necessary to split the licence into two sections (Sections A & B). In addition, Section B as it currently stands only applies to the Board. However, with the sale of Bord Gáis Energy, the Board will no longer be involved in the supply business. It is thus proposed to change the licence so it is in one section. Additional duties to the incumbent would then only be included in the incumbent's licence. However, in the interest of transparency this licence would be published.

The CER notes that the shift to deregulation and ex-post controls, as reflected in the proposed licence changes, require a more active engagement on behalf of the customer to benefit from competition in the market. In this regard, the CER will continue to take measures to assist the customer in engaging in the market. The CER will also continue to monitor the market to ensure all consumers are in a position to share in any benefits from competition and to prevent certain groups of consumers from being excluded from same. The provisions of the 3rd Package allow the CER take action where it finds that customers are not benefiting from competition.

All modifications are highlighted through track changes in the natural gas supply licences published alongside this consultation paper. In line with legislative requirements, the CER has published a notice in the Irish Times on 27 September 2013 drawing the public's attention to the proposed modifications, their nature and

the reasoning for them. This is the first step in the modification process as prescribed in legislation and detailed in section 2.4 of this document.

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1.0 Introduction

1.1 The Commission for Energy Regulation

The Commission for Energy Regulation (CER) is the independent body responsible for overseeing the regulation of electricity and gas sectors in Ireland. 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 Commission'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 *Electricity Regulation Amendment (SEM) Act 2007* outlined the CER's functions in relation to the Single Electricity Market (SEM) for the island of Ireland. This market is regulated by the CER and the Northern Ireland Utility Regulator (UR). The Commission is working to ensure that consumers benefit from regulation and the introduction of competition in the energy sector.

1.2 Purpose of this paper

In the Review of the NDM Retail Gas Market ([CER/13/096](#)), the CER detailed the criteria for deregulation of the domestic gas retail market, namely:

- Threshold for deregulation is 60% (customers) with rebranding of its retail business and without rebranding the threshold is 55%,
- At least 3 suppliers, of which two are non-Bord Gáis Energy suppliers. Each of these must have a market share in excess of 10%, and;
- Customer switching rates in excess of 10% per year.

With these criteria now set, and in anticipation of full deregulation of the gas retail markets, the CER has reviewed the natural gas supply licence. This document sets out the proposed changes to the licence and the rationale for them. The main aims are to ensure that the licence allows for the ex-post controls of a deregulated market and that it provides for an as even as possible playing field for all suppliers, while providing effective protection to customers.

1.3. Structure of this paper

Section 2.0 sets out a brief overview of the transition to full deregulation of the retail gas markets, including the legislative provisions. It also provides information on the Gas Regulation Bill 2013² allowing for the sale of Bord Gáis Energy. Finally it details the process that must be followed for the implementation of the proposed licence changes.

Section 3.0 presents the CER's review of the natural gas supply licence and the proposed changes to the licence. It provides the rationale for the proposed changes and seeks respondents' views on same.

Section 4.0 sets out the next steps.

² Gas Regulation Bill 2013

<http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2013/9113/b9113d.pdf>

1.4 Responding to this paper

Interested parties are invited to comment on the issues raised in this consultation paper by close of business on Tuesday 29 October 2013.

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

Dana Paraschiv,
Retail,
Commission for Energy Regulation,
The Exchange,
Tallaght,
Dublin 24.
Email address: dparaschiv@cer.ie



2.0 Background

Any person or company who intends to supply natural gas to final customers requires a supply licence from the CER. The CER may grant, or refuse to grant, a natural gas supply licence to a person under Section 16 of the Gas (Interim) (Regulation) Act, 2002. A copy of the licence can be viewed through the following link [CER/11/817](#). It is split into two sections: section A, with 22 Conditions applicable to all licence holders and section B, with a further 8 conditions that apply only to the incumbent Bord Gáis Energy (as the supply arm of Bord Gáis Éireann).

With the continued development of competition in the gas retail markets and the transition to full deregulation, the CER has reviewed the licence conditions in Section B and how the obligations thereunder are discharged. Changes are proposed, some removing requirements and others spreading them across the industry, with a view to developing a more level playing field for competition to progress further. Before the individual proposals are discussed in Section 3, this section sets the scene by providing an overview of the progression towards full deregulation, the legislative provisions allowing for this deregulation (and the sale of Bord Gáis Energy), as well as the process that must be followed for the implementation of any modifications to the natural gas supply licence.

2.1 Deregulation of the Natural Gas Retail Markets

In November 2010, the CER published the consultation paper entitled “Proposals on a Roadmap for Deregulation in the Non-Daily Metered Retail Gas Market” [CER/10/212](#). The CER published its decision on the Roadmap on 7th June 2011 [CER/11/071](#), which outlined the characteristics that would define a competitive market in the retail Non-Daily Metered gas sector and which would trigger the removal of ex-ante revenue and price controls from Bord Gáis Energy. The gas business markets were subsequently fully deregulated in October 2011.

On 4th October 2012, the CER published a consultation paper entitled “Review of Non-Daily Metered Retail Gas Market” ([CER/12/164](#)). That document considered whether the methodology and findings as set out in the Roadmap were still valid. In the subsequent decision paper ([CER/13/096](#)), the CER set the criteria for deregulation of the domestic gas retail market.

The CER conducts monthly competition reviews to establish whether these criteria for deregulation have been met (which include a forecast of switching rates to provide an indication as to when the criteria for deregulation are likely to be met). The latest competition review ([CER/13/196](#)) published in September concluded that the criteria for deregulation had not all been met to allow for the immediate deregulation of the domestic gas retail market. While a number of criteria had been met, that pertaining to market share had not (at the end of July 2013 Bord Gáis Energy still had an estimated 60.27% market share based on customer numbers). Data indicated that the 60% threshold would be met in August 2013 and the 55% in February 2014. While the 60% threshold will have been met in August, it was noted that the CER had not yet received a decision on branding from Bord Gáis Energy; which remains the case. Regardless of a decision on branding, the CER will notify the market of the decision to deregulate at least one month before it will take place.

2.2 Gas Regulation Bill 2013

In July of this year the Government published the Gas Regulation Bill 2013. The bill provides for the restructuring of Bord Gáis Éireann, by establishing a gas networks subsidiary company consistent with the requirements of the 3rd Package and that will remain in State ownership. It also underpins the sale of Bord Gáis Energy, as part of the Government's State asset disposal programme³, by allowing for the transfer of Bord Gáis Éireann's "energy business" to a separate subsidiary. The bill defines the "energy business" as the:

"energy business owned and operated by BGÉ [Bord Gáis Éireann] and its subsidiaries and includes the functions, business activities, assets and licences of BGÉ [Bord Gáis Éireann] and its subsidiaries that relate to—

- (a) the supply of natural gas,*
- (b) the generation of electricity,*
- (c) the supply of electricity, and*
- (d) the operations of the subsidiary of BGÉ registered under the laws of the United Kingdom of Great Britain and Northern Ireland as firmus energy (Distribution) Limited under company registration number 05375370";*

Bord Gáis Éireann, with the approval of the Minister for Communications Energy and Natural Resources and the Minister of Public Expenditure and Reform, may sell (dispose of its shares in) this separate subsidiary. The CER understands that the sale is to be concluded by the end of this year. With this sale, the purchaser will be required to adhere to all regulatory requirements applied to Bord Gáis Energy.

2.3 Legislative provisions for deregulation

The CER has engaged with the Department of Communications, Energy and Natural Resources (DCENR) to implement any necessary legislative changes for the deregulation of the domestic market.

The removal of tariff regulation represents a marked shift in the regulatory framework and the CER is mindful that all the market outcomes and customer impacts of deregulation cannot be clearly predicted. It is not seen as prudent to rely, in the first instance, on competition law alone to remedy any unintended consequences. Therefore, the ability to re-introduce ex-ante price controls, should market conditions require it, is seen as appropriate. Where such monitoring indicates market distortion or restriction of competition, and/or that customers are not benefiting from competition, the CER should have the power to intervene and ultimately, if deemed necessary, to re-impose some form of tariff regulation. The Gas Regulation Bill, 2013 provided for this by amending Section 2 of the Gas (Amendment) Act 1987 as follows:

³ <http://www.merriestreet.ie/index.php/tag/asset-disposal-programme/>

“(7) (a) The Commission may, from time to time, examine charges, and the costs underlying such charges, or any proposals to alter such charges, for natural gas supplied to customers by the holder of a supply licence granted under section 16 of the Gas (Interim) (Regulation) Act 2002.

(b) Where it considers it necessary following an examination under paragraph (a), the Commission shall issue a direction to the holder of a supply licence granted under section 16 of the Gas (Interim) (Regulation) Act 2002 in relation to either or both the nature and the amount of any charge or proposed charge referred to in that paragraph and the holder of the supply licence shall comply with such a direction.”

It should be noted that these provisions to examine charges and issue directions on charges are not limited to the incumbent but apply to all suppliers. In this regard, where market monitoring indicates that customers are not benefiting from competition or that a supplier is engaging in either predatory behaviour or excessive pricing, the CER will identify and implement appropriate measured remedies. As outlined in legislation, the CER is required under legislation “to monitor the level and effectiveness of market opening and the development of competition in the supply of electricity and gas to final customers” and is required, on foot of this monitoring, to take any action deemed necessary to:

“(i) prevent a distortion or restriction of competition in the supply of electricity to final customers, or

(ii) ensure that final customers are benefiting from competition in the supply of electricity”,

These requirements stem from the 3rd Package and were transposed into Irish law by SI No. 450 of 2010⁴ and SI No. 630 of 2011⁵ (the SIs covering electricity and gas markets, respectively). The CER is currently developing an enhanced market monitoring framework. It published an initial consultation on this matter in December 2011 ([CER/11/221](#)) ‘Market Monitoring in the Electricity and Gas Retail Markets’. The proposed framework sought data to be collected from suppliers and network operators and was designed to provide an effective view of competition in electricity and gas retail markets (as required under legislation). To this end, best practice guidelines were used as the building blocks for the framework. In looking to these best practice guidelines, the CER took into account the specifics of the Irish retail markets, leading to a tailored framework for this jurisdiction. Having reviewed the consultation responses, the CER is proposing to conduct a further round of consultation that will include workshops.

Where market monitoring shows any distortion or restriction of competition, or that final customers are not benefiting from competition, the CER will take measured action. Though this may ultimately lead to the re-imposition of ex-ante price controls,

⁴ SI No. 450 of 2010
<http://www.irishstatutebook.ie/pdf/2010/en.si.2010.0450.pdf>

SI
⁵ SI No. 630 of 2011
<http://www.irishstatutebook.ie/2011/en/si/0630.html>

the CER would note that such a step would only be taken as a last resort, where all other effective alternatives had been exhausted.

2.4 Legislative Requirements for Modifications to the Natural Gas Supply Licence

The CER is required to carry out modifications to 'the terms, conditions or requirements' of natural gas supply licences in accordance with sections 20 to 22 of the Electricity Regulation Act, 1999. Pursuant to Section 20, the CER is commencing the licence modification procedure with the publication of a notice drawing the public's attention to the proposed modification, their nature and the reasoning for them.

The notice is being published today in the Irish Times and a copy of the notice has been provided to all licensed natural gas suppliers. The notice informs that any comments on / objections to the modification should be submitted to the CER before XXth October (this provides 28 days for comment). In accordance with the requirements of section 20 of the Electricity Regulation Act, 1999 a copy of the Notice has also been furnished to the Minister for Communications, Energy and Natural Resources, Mr Pat Rabbitte. A copy of the proposed modified licences are published alongside this consultation paper (changes are highlighted). Note that there are two licences, one pertaining to Bord Gáis Energy and another pertaining to a generic licence issued to all other suppliers.

3.0 Proposed Changes to the Natural Gas Supply Licence

3.1 Introduction

This section presents the proposed changes to the natural gas supply licence. They are in relation to the licence conditions that are currently only applied to Bord Gáis Energy as the retail arm of Bord Gáis Éireann.

Currently, the natural gas supply licence is divided into two sections: section A that applies to all licence holders and section B that applies only to Bord Gáis Energy. The additional conditions contained in section B are listed below:

- Condition 23 - Purchasing of Natural Gas
- Condition 24 - Terms of Supply to Customers
- Condition 25 - Regulatory Accounts
- Condition 26 - Ring-fencing of the Shipping and Supply Business and Restriction on Use of Certain Information
- Condition 27 - Compliance Officer
- Condition 28 - Prohibition of Cross-Subsidisation
- Condition 29 - Duty of Non-Discrimination
- Condition 30⁶ - Duty to Offer Supply

With the transition to full deregulation of the gas retail markets, the CER has reviewed and is proposing changes to these additional licence obligations on Bord

⁶ Note that the current licence incorrectly presents this condition as Condition 31.

Gáis Energy. This section discusses the proposed changes to these conditions and duties and presents the CER's proposals, providing the rationale for them and seeking comments on them. All proposed modifications are highlighted (through track changes) in to the supply licences published alongside this paper. The proposals detailed in this document should be read alongside these licences.

3.2 Changes to the natural gas supply licence

3.2.1 Condition 23 – Purchasing of Natural Gas

This condition requires Bord Gáis Energy to ensure that it purchases gas in a manner which will:

- i) obtain the best value for customers
- ii) provide stability and price certainty for final customers
- iii) procure gas in a fair, open and transparent manner

This is reflected in Condition 23 as follows:

“The Licensee shall purchase Natural Gas at the best effective price reasonably obtainable having regard to:

- (a) the sources of supply available from time to time; and*
- (b) any considerations liable to affect its ability to discharge its obligations under this Condition in the future, including the future security, reliability and diversity of sources of Natural Gas available for purchase.”*

This condition is equivalent to the Economic Purchase Obligation placed on the Public Electricity Supplier in the electricity market. The need for such a requirement was driven by a lack of competitive pressure on the decision making process within the incumbent prior to the establishment of effective competition and to ensure that Bord Gáis Energy purchases natural gas at a cost reflective price. With the development of competition, the necessity for such a restraint is diminished and it is envisaged to fall away completely with full deregulation.

Deregulation is a step recognised and promoted by ERGEG⁷ to further effective competition and one that should deliver real benefits for consumers. Effective competition and related commercial pressures will compel all gas suppliers operating in the deregulated gas retail markets to behave prudently and seek to purchase gas at competitive prices without the need for added regulatory burden, rendering an Economic Purchase Obligation unnecessary. Therefore, the CER is proposing that this licence condition be removed when the gas retail markets are fully deregulated.

⁷ European Regulators Group for Electricity and Gas, Status Review of End-User Price Regulation as of 1 January 2010
http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Customers/Tab1/E10-CEM-34-03_price%20regulation_8-Sept-2010.pdf

Proposal 1 Condition 23 - Purchasing of natural gas

The CER is proposing that upon full deregulation of the gas retail markets, Condition 23, which imposes an Economic Purchase Obligation on the incumbent, be removed from the natural gas supply licence.

Question 1

Respondents are invited to comment on the proposal that Condition 23 be removed, with full deregulation of the gas retail markets, from the natural gas supply licence. Are you in favour of this proposal? Outline reasons for agreement or disagreement.

3.2.2 Condition 24 – Terms of Supply to Customers

Under this condition the CER may direct Bord Gáis Energy, as to its terms (including price) of supply. This condition is underpinned by Section of the Gas (Amendment) Act 1987. Condition 24 states that:

1. *“Except where the Licensee is required to supply such Final Customers pursuant to a Supplier of Last Resort Direction issued in accordance with Condition 18 or legislation in force from time to time, the Licensee shall comply with any directions given by the Commission under this Condition as to the terms (including as to price) on which the Licensee may supply Natural Gas to Final Customers.*
2. *The Licensee shall publish the terms on which it supplies Natural Gas to Final Customers, unless the Commission consents otherwise.”*

In an uncompetitive market, price regulation imposes a constraint on the incumbent supplier by serving as proxy for competition, preventing it from extracting economic rents from consumers. In this regard, price regulation has protected customers and encouraged market entry. Although tariff regulation has been beneficial, it is recognised that, as the market develops and becomes more competitive, the presence of regulated prices can ultimately become a constraint to the development of full competition. Deregulation is a step recognised and promoted by ERGEG to further effective competition and one that should deliver real benefits for consumers.

The removal of tariff regulation represents a marked shift in the regulatory framework and the CER is mindful that all the market outcomes and customer impacts of deregulation cannot be clearly predicted. It is not seen as prudent to rely, in the first instance, on competition law alone to remedy any unintended consequences. Therefore, the ability to re-introduce ex-ante price controls, should market conditions require it, is seen as appropriate. Where such monitoring indicates market distortion or restriction of competition, and/or that customers are not benefiting from competition, the CER should have the power to intervene. Ultimately, the CER has recourse to reinstate price regulation where that is deemed to be necessary-provided by section 2 of the Gas (Amendment), Act 1987 as amended by the Gas Regulation Bill, 2013. However, the CER will take measured action based on the principles of proportionality and, albeit it would not hesitate in re-imposing ex-ante price regulation where necessary, it would consider this a last resort where all other effective options have been exhausted.

With full deregulation, the CER considers that condition 24 is no longer necessary. It further considers that any action that may be taken would be measured in response to the findings of its market monitoring activities and be taken by issuing a direction under condition 16 (Compliance with Laws and Directions) of the supply licence.

Proposal 2 Condition 24 – Terms of supply to customers

With full deregulation of the gas retail markets, the CER considers that condition 24 is no longer necessary and is proposing that it be removed from the natural gas supply licence. This would see any action emanating from the CER's market monitoring activities (including the re-imposition of ex-ante price controls) being pursued under condition 16 of the natural gas supply licence.

Question 2

Respondents are invited to comment on the proposal that Condition 24 be removed, upon full deregulation of the gas retail markets, from the natural gas supply licence. Are you in favour of this proposal? Outline reasons for agreement and disagreement.

3.2.3 Condition 25 – Regulatory Accounts

The requirements of this condition impose certain obligations on Bord Gáis Energy to hold separate financial accounts for its business from those of its affiliates. This is a legislative requirement placed on all suppliers – provided for under the Gas (Interim) (Regulation) Act 2002, as amended by Section 11(2) (i) of the S.I. No. 452 of 2004⁸. In light that there is a statutory obligation on all natural gas suppliers to maintain regulatory accounts, the CER considers it prudent to reflect this in the natural gas supply licence – this would follow the same approach as on the electricity side where all supply licences have a condition requiring the licensee to retain regulatory accounts.

Proposal 3 Condition 25 – Regulatory Accounts

The CER is proposing to introduce a licence condition in all natural gas supply licences to reflect the statutory obligation on suppliers to maintain regulatory accounts.

Question 3

Respondents are invited to comment on the proposal that a licence condition be introduced in all natural gas supply licences to reflect suppliers' obligations to maintain regulatory accounts. Are you in favour of this proposal? Outline reasons for agreement or disagreement.

⁸ SI No. 452 of 2004

<http://www.irishstatutebook.ie/2004/en/si/0452.html>

3.2.4 Condition 26 – Ring-fencing of the Shipping and Supply Business and Restriction on Use of Certain Information

Under Condition 26 of the natural gas supply licence, Bord Gáis Éireann is required to designate one division to exercise the functions of both the Shipping Business and the Supply Business. This division, referred to as the “Shipping and Supply Business”, is Bord Gáis Energy. Additionally, this condition requires:

- full managerial and operational independence of the Shipping and Supply Business from other businesses of Bord Gáis Éireann and of its affiliates and related undertakings
- no information relating to, or derived from, the Shipping and Supply Business, be disclosed for the benefit of, or used for the purposes of, any other Separate Business - subject to specific exemptions.

The legislative provisions in the Gas Regulation Bill 2013 see Bord Gáis Éireann split into two companies, with one taking ownership and control of the physical gas networks as a networks only business. The other company will take control of the energy business and it is envisaged that it will be sold by the end of the year. After the sale of the energy business, Bord Gáis Éireann will become a networks only business and will not be involved in any energy production or supply activities. It is envisaged that this will allow for certification of the networks business as fully unbundled under the Full Ownership Unbundling (FOU) provisions of the 3rd Package. With FOU, the incumbent will be in the same position as any other supplier and as such the requirement for placing additional ring-fencing requirements on it falls away. Therefore, it is proposed to remove the additional ring-fencing requirements by deleting Condition 26 of the natural gas supply licence when the networks business is certified as having unbundled on the FOU model.

Proposal 4 Condition 26 – Ring-fencing of the shipping and supply business and restriction on use of certain information

Where Bord Gáis Éireann’s networks business is certified under the Full Ownership Unbundled provision of the 3rd Package, the CER is proposing that Condition 26, pertaining to ring-fencing requirements, be removed from the natural gas supply licence.

Question 4

Respondents are invited to comment on the proposal that Condition 26 be removed from the natural gas supply licence, where Bord Gáis Éireann’s networks business is certified under the Full Ownership Unbundled provision of the 3rd Package. Are you in favour of this proposal? Outline reasons for agreement or disagreement.

3.2.5 Condition 27 – Compliance Officer

Under this condition, the CER may direct Bord Gáis Energy to appoint a Compliance Officer for the purpose of ensuring compliance with the relevant duties. The condition includes details in relation to the duties of the Compliance Officer and the relevant reporting arrangements.

The purpose of this condition is to ensure that Bord Gáis Energy is compliant with all its duties and obligations under the natural gas supply licence. As we are aware, these duties and obligations have extended beyond those placed on all other

suppliers. However, with full deregulation of the retail markets and the anticipated certification of Bord Gáis Éireann as a fully ownership unbundled networks company, it is proposed that these additional duties and obligations be in some instances removed or spread across suppliers to provide for a more even playing field to allow for effective competition to be fostered. These proposals, which are detailed in this consultation paper, see the obligations of the incumbent being aligned more with other suppliers. As such, and with no other supplier required to provide for a Compliance Officer, the CER proposes to remove this licence condition where the gas retail markets have been fully deregulated and where Bord Gáis Éireann's networks companies have been certified as fully ownership unbundled.

Proposal 5 Condition 27 – Compliance Officer

The CER is proposing that Condition 27, pertaining to the requirement for Bord Gáis Energy to provide for a compliance officer, be removed from the natural gas supply licence where the gas retail markets have been fully deregulated and the where Bord Gáis Éireann's networks companies have been certified as fully ownership unbundled.

Question 5

Respondents are invited to comment on the proposal that Condition 27 be removed from the natural gas supply licence where the gas retail markets have been fully deregulated and the where Bord Gáis Éireann's networks companies have been certified as fully ownership unbundled. Are you in favour of this proposal? Outline reasons for agreement or disagreement.

3.2.6 Condition 28 - Prohibition of Cross-Subsidisation

Condition 28 applies to any part of the shipping and supply business that is not subject to the ex-ante price controls under Condition 23 of the supply licence. The licence condition states:

“The Licensee shall ensure that those parts of the Shipping Business and Supply Business which are not subject to Condition 23 do not give any direct or indirect cross-subsidy to, or receive any direct or indirect cross-subsidy from, any other business or part of a business of the Licensee or of any Affiliate or Related Undertaking of the Licensee (whether or not another a Separate Business).”

As previously described, the CER considers that the necessity for the restrictions currently in place to effectively ring-fence Bord Gáis Energy from the networks companies fall away where Bord Gáis Networks is certified as a fully ownership unbundled network company. With no similar licence condition applied to other suppliers the CER is proposing that Condition 28 be deleted where the networks companies are certified as fully ownership unbundled.

Proposal 6 Condition 28 - Prohibition of Cross-Subsidisation

The CER is proposing that Condition 28, pertaining to the prohibition of cross-subsidisation, be removed from the natural gas supply licence where Bord Gáis Éireann's networks companies have been certified as fully ownership unbundled.

Question 6

Respondents are invited to comment on the proposal that Condition 28 be removed from the natural gas supply licence where Bord Gáis Éireann's networks companies have been certified as fully ownership unbundled. Are you in favour of this proposal? Outline reasons for agreement or disagreement.

3.2.7 Condition 29 - Duty of Non-Discrimination

Under the requirements of condition 29, Bord Gáis Energy may not show undue preference or exercise undue discrimination when offering terms of supply to final customers. In essence, this condition means that Bord Gáis Energy cannot discriminate between different classes of customers so that defined categories of final customers are charged at the same rate.

With the deregulation of the domestic gas market, Bord Gáis Energy will no longer be subject to ex-ante price regulation but to ex-post market monitoring, which creates the possibility of adopting a commercial policy of price discrimination based on different customer categories. As the gas retail markets move to full deregulation, customer protection with fair and transparent pricing is of paramount importance and it is necessary to anticipate the potential issues that may arise for consumers in the deregulated market.

Mindful of potential changes in an increasingly competitive market, which could cause customer confusion with increased tariff and product complexity, the CER reviewed its customer protection measures in both the electricity and gas retail markets and published a decision paper in 2011 on a number of customer protection initiatives designed to assist customers to actively engage in the competitive market. In tandem, the CER has continued to monitor the market and, as previously mentioned, is currently in the process of developing an enhanced market monitoring framework. Where market monitoring shows any distortion or restriction of competition, or that final customers are not benefiting from competition, the CER will take measured action.

When transitioning to the full deregulation of the electricity markets, some stakeholders stated that this (ex-post) approach could give rise to concerns for customer welfare in the domestic market. The main concern was that the market incumbent could abuse its market position and some customers, or groups of customers, may "get left behind" in terms of enjoying the benefits of competition and inadvertently subsidise the discounts enjoyed by others. In order to address these concerns, the CER sought the views of stakeholders on price discrimination in the deregulated market and the sufficiency of the combined measures proposed through customer protection initiatives and market monitoring. This was done through an open consultation ([CER/11/059](#)) Price Discrimination and Customer Protection in the Deregulated Electricity Market. The consultation detailed that, while the introduction of a non-discrimination clause could serve to protect customers from potential price discriminatory policies, it could also have other impacts in terms of price competition, non-price effects and increased administrative requirements.

Price competition

The imposition of a non-discriminatory clause could reduce the overall level of competition in the market, which could result in increased prices over time.

Conversely, this clause could reveal and remedy predatory pricing behavior in more competitive sections of the market.

Non-price effects

The imposition of a non-discrimination clause could potentially dampen the speed and extent of competitive reaction in the market. In order to comply with this, suppliers may need to take more care and time in issuing new offers or proposals to the market. Competition should bring product and service innovation, and while this has the potential to create greater product / tariff complexities, the requirement for suppliers to equalise margins could make offers less attractive to customers and to suppliers alike. This could prevent the development of a dynamic market and result in a range of new offers that do not differ too much from existing ones, merely shifting the benchmark. There is a risk that competition could be distorted away from standard offers and towards allowed exemptions, such as “time limited” or “initial” offers, where innovative offers or new customer acquisition targeted offers are likely to be objectively justified.

Increased administrative requirements

The imposition of a non-discrimination clause would also increase the regulatory burden on suppliers. As discussed, suppliers may need to take more care and time in issuing new offers or proposals to the market and this may discourage innovation. A further regulatory risk is that the increased burden could act as a deterrent to domestic market entry for other suppliers, impacting the potential for sustainable competition.

The CER concluded that the imposition of a non-discrimination clause would remove much of the incentive for customers to exercise choice and curtail the need among suppliers to offer better value for money. It was considered that if consumers did not, or could not, search for better deals, electricity suppliers would have no incentive to match their competitors’ offers and so prices across the market would tend to be higher than they could be. This was a view strongly put forward by the Competition Authority in their response to the consultation paper. In making the decision not to introduce a non-discrimination clause in the electricity retail markets the CER was also guided by consumer market research that showed that domestic customers had a high degree of unprompted awareness of independent competitors in the market. This was noted as a positive position from which to introduce additional market supports such as the provision of more information on switching and greater clarity on promotions to encourage customers to switch. The position for gas is also similar with the most recent consumer survey showing comparable levels of unprompted awareness amongst domestic gas customers of independent suppliers as domestic electricity customers.

The CER is of the opinion that the conclusions reached when deciding not to impose a non-discrimination clause on the electricity retail market are also valid for the gas retail market. As such, and considering the sustained high levels of switching in the gas retail markets and the high level of awareness amongst customers of independent suppliers, the CER is proposing not to impose a non-discrimination clause on any natural gas supplier at this time.

The CER notes that this approach would require a more active engagement on behalf of the customer to benefit from competition in the market. In this regard, the CER will continue to take measures to assist the customer in engaging in the market. The CER will also continue to monitor the market to ensure all consumers are in a position to share in any benefits from competition and to prevent certain groups of consumers from being excluded from same. The provisions of the 3rd Package allow the CER to take action where it finds that customers are not benefiting from competition. Therefore, while differential tariffs based on customer segmentation would allow suppliers to bring a range of offers to the market, the CER would continue to monitor how this approach is implemented and the impact on consumers. Where customers are not benefiting from competition or there is evidence of unfair discrimination the CER would intervene.

Proposal 7 Condition 29 - Duty of Non-Discrimination

The CER is proposing that a duty of non-discrimination not to be applied, at this time, in the deregulated market place. It is proposed that such obligation currently placed on Bord Gáis Energy would fall away.

Question 7

Respondents are invited to comment on the proposal to remove condition 29 of the natural gas supply licence when the market is fully deregulated. Are you in favour of this proposal? Outline reasons for agreement or disagreement.

3.2.8 Condition 31 – Duty to Offer Supply

Condition 31 places an obligation of universal service on Bord Gáis Energy, which requires that it meets

“all reasonable requests to supply electricity”

Although under this licence condition the reasonableness or otherwise of a request is ultimately determined by the CER, specific instances are detailed where Bord Gáis Energy is not obligated to offer supply of gas. In practice, the duty to offer supply sees Bord Gáis Energy providing supply where a customer does not actively choose a supplier or cannot find an alternate supplier that is willing to provide supply to them at reasonable rates.

With the deregulation of the electricity retail market, the CER introduced a duty to offer supply into all supply licences, which extended to offering supply to domestic and small business (DG5) customers. The supplier was only obligated to offer supply if they were active in the markets. The duty to offer supply included small businesses, as in practice many small business customers are similar to domestic customers, often exhibiting the same behaviours as domestic customers with regard to their engagement with the market in terms of shopping around and switching supplier.

Turning to other jurisdictions, the CER notes the UK experience and that Ofgem introduced a duty of supply on all licence holders who supply gas to domestic customers.

Taking account of the need to establish a fairer method of ensuring universal service for customers in a competitive market than the designation of a single supplier, the CER is proposing that a duty to offer supply be introduced into all supply licences.

This duty would pertain to domestic and I&C business customers. The proposed licence condition specifies certain instances where requests for supply are not reasonable. It also provides for the CER to determine whether other requests are reasonable or not. The CER considers the following instances as unreasonable under paragraph 3(f) of the relevant licence:

- where a customer is debt flagged, and;
- where the supplier is not actively supplying the market of the customer requesting the supply.

In relation to debt-flagging, this follows the approach in electricity, where it was deemed unreasonable to impose a duty to supply in cases where the customer was debt flagged. It is considered that this would undermine suppliers' ability to cancel a debt-flagged Change of Supplier request, which is fundamental to the debt-flagging process.

The CER believes that the above should provide sufficient guidance to determine, in the majority of cases, whether a request is reasonable. However, if questions should still arise, a mechanism for seeking clarity is detailed in the licence condition. This proposal does not see any change to the duty to offer placed on the Bord Gáis Energy. With the adoption of this proposal the CER would monitor how suppliers discharge their obligations and the tariffs offered.

Proposal 8 Condition 31 – Duty to offer supply

The CER is proposing to retain the duty to offer supply on Bord Gáis Energy as is in conjunction with introducing a duty to offer supply on all suppliers. This new duty on all suppliers would apply to gas domestic and I&C customers. It would only apply where the supplier is active in the market the customer is requesting supply from.

Question 8

Respondents are invited to comment on the proposal that a duty to supply for domestic and I&C business customers should be introduced in all natural gas supply licences. Do you agree with the duty including both domestic and I&C customers? Do you agree that the current duty (which is not limited to domestic and I&C businesses) should remain with Bord Gáis Energy? Outline reasons for agreement or disagreement.

3.2.9 Change in the structure of the natural gas supply licence

The proposals put forth in this document see certain duties being spread across suppliers in the interest of providing an even as possible playing field for effective competition to be fostered. Other requirements are being deleted due to full deregulation and the anticipated certification of Bord Gáis Éireann as a fully ownership unbundled networks company. These proposals see the conditions applied to the incumbent being further aligned with those of all other suppliers. With the proposed extent of this alignment it is deemed no longer necessary to split the licence into two sections. In addition, section B as it currently stands only applies to the Board. However, under the FOU model, the Bord Gáis Éireann will no longer be involved in the supply business. It is thus proposed (and the modified licences published alongside this document reflect such) to change the licence so it is in one section. Additional duties of the incumbent would only be included in the incumbent's licence. However, in the interest of transparency this licence would be published.

Finally please note that all references to Bord Gáis Éireann will remain and will only be altered once the change control process has been completed for the ultimate purchaser of Bord Gáis Energy. At that time, the references will be changed as required to reflect the new purchaser.

Proposal 9 Change in the structure of the supply licence

With the proposed changes to the supply licence, which align to a high degree the licence conditions of the incumbent to those of any other supplier, the CER is proposing that the structure of the licence be changed so that conditions are presented in a single section – hence removing the section only applicable to the Board. Any additional licence obligations on the incumbent would then only be present in the incumbent’s licence, which the CER would publish in the interest of transparency.

Question 9

Respondents are invited to comment on the proposal to change the structure of the natural gas supply licence so it only has one section. Do you agree with this proposal? Do you agree that the additional licence obligation placed on the incumbent would only be included in the natural gas supply licence granted to them? Outline reasons for agreement or disagreement.

4.0 Next Steps

The CER invites comments on the proposals presented in this paper from interested parties to be submitted no later than 5.00pm on XXth October 2013. Comments should be sent, preferably in electronic format to;

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Retail,
Commission for Energy Regulation,
The Exchange,
Tallaght,
Dublin 24.
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Appendix I - Consultation Proposals and Questions

Proposal 1 Condition 23 - Purchasing of natural gas

The CER is proposing that upon full deregulation of the gas retail markets, Condition 23, which imposes an Economic Purchase Obligation on the incumbent, be removed from the natural gas supply licence.

Question 1

Respondents are invited to comment on the proposal that Condition 23 be removed, with full deregulation of the gas retail markets, from the natural gas supply licence. Are you in favour of this proposal? Outline reasons for agreement or disagreement.

Proposal 2 Condition 24 – Terms of supply to customers

With full deregulation of the gas retail markets, the CER considers that condition 24 is no longer necessary and is proposing that it be removed from the natural gas supply licence. This would see any action emanating from the CER's market monitoring activities (including the re-imposition of ex-ante price controls) being pursued under condition 16 of the natural gas supply licence.

Question 2

Respondents are invited to comment on the proposal that Condition 24 be removed, upon full deregulation of the gas retail markets, from the natural gas supply licence. Are you in favour of this proposal? Outline reasons for agreement and disagreement.

Proposal 3 Condition 25 – Regulatory Accounts

The CER is proposing to introduce a licence condition in all natural gas supply licences to reflect the statutory obligation on suppliers to maintain regulatory accounts.

Question 3

Respondents are invited to comment on the proposal that a licence condition be introduced in all natural gas supply licences to reflect suppliers' obligations to maintain regulatory accounts. Are you in favour of this proposal? Outline reasons for agreement or disagreement.

Proposal 4 Condition 26 – Ring-fencing of the shipping and supply business and restriction on use of certain information

Where Bord Gáis Éireann's networks business is certified under the Full Ownership Unbundled provision of the 3rd Package, the CER is proposing that Condition 26, pertaining to ring-fencing requirements, be removed from the natural gas supply licence.

Question 4

Respondents are invited to comment on the proposal that Condition 26 be removed from the natural gas supply licence, where Bord Gáis Éireann's networks business is certified under the Full Ownership Unbundled provision of the 3rd Package. Are you in favour of this proposal? Outline reasons for agreement or disagreement.

Proposal 5 Condition 27 – Compliance Officer

The CER is proposing that Condition 27, pertaining to the requirement for Bord Gáis Energy to provide for a compliance officer, be removed from the natural gas supply licence where the gas retail markets have been fully deregulated and the where Bord Gáis Éireann's networks companies have been certified as fully ownership unbundled.

Question 5

Respondents are invited to comment on the proposal that Condition 27 be removed from the natural gas supply licence where the gas retail markets have been fully deregulated and the where Bord Gáis Éireann's networks companies have been certified as fully ownership unbundled. Are you in favour of this proposal? Outline reasons for agreement or disagreement.

Proposal 6 Condition 28 (Prohibition of Cross-Subsidisation)

The CER is proposing that Condition 28, pertaining to the prohibition of cross-subsidisation, be removed from the natural gas supply licence where Bord Gáis Éireann's networks companies have been certified as fully ownership unbundled.

Question 6

Respondents are invited to comment on the proposal that Condition 28 be removed from the natural gas supply licence where Bord Gáis Éireann's networks companies have been certified as fully ownership unbundled. Are you in favour of this proposal? Outline reasons for agreement or disagreement.

Proposal 7 Condition 29 (Duty of Non-Discrimination)

The CER is proposing that a duty of non-discrimination not to be applied, at this time, in the deregulated market place. It is proposed that such obligations currently placed on Bord Gáis Energy would fall away.

Question 7

Respondents are invited to comment on the proposal to remove condition 29 of the natural gas supply licence when the market is fully deregulated. Are you in favour of this proposal? Outline reasons for agreement or disagreement.

Proposal 8 Condition 31 – Duty to offer supply

The CER is proposing to retain the duty to offer supply on Bord Gáis Energy as is while also introducing a duty to offer supply on all suppliers. This new duty on all suppliers would apply to gas domestic and I&C customers. It would only apply where the supplier is active in the market the customer is requesting supply from.

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Proposal 9 Change in the structure of the supply licence

With the proposed changes to the supply licence, which align to a high degree the licence conditions of the incumbent to those of any other supplier, the CER is proposing that the structure of the licence be changed so that conditions are presented in a single section – hence removing the section only applicable to the Board. Any additional licence obligations on the incumbent would then only be present in the incumbent’s licence, which the CER would publish in the interest of transparency.

Question 9

Respondents are invited to comment on the proposal to change the structure of the natural gas supply licence so it only has one section. Do you agree with this proposal? Do you agree that the additional licence obligation placed on the incumbent would only be included in the natural gas supply licence granted to them? Outline reasons for agreement or disagreement.