Decision - Review of the Natural Gas Supply Licence - CER/14/025

Review of the Natural Gas Supply Licence

<table>
<thead>
<tr>
<th>DOCUMENT TYPE:</th>
<th>Decision Paper</th>
</tr>
</thead>
<tbody>
<tr>
<td>REFERENCE:</td>
<td>CER/14/025</td>
</tr>
<tr>
<td>DATE PUBLISHED</td>
<td>31st January 2014</td>
</tr>
<tr>
<td>QUERIES TO:</td>
<td><a href="mailto:dparaschiv@cer.ie">dparaschiv@cer.ie</a></td>
</tr>
</tbody>
</table>


www.cer.ie
Abstract: The CER has consulted on proposed modifications to the Natural Gas Supply Licences, granted by the CER under Section 16 of the Gas (Interim) (Regulation) Act, 2002. The proposed modifications took into account new legislation, regulatory decisions and market developments and were published for comment in CER/13/220. Following full consideration of comments received, the CER is presenting its decision on the updated natural gas supply licences, which will come into effect in 28 days’ time from the date of the publication of the decision paper. This does not prejudice the right of the licensees, under Section 29 of the Electricity Regulation Act, 1999, to appeal the CER’s decision to modify the natural gas supply licence.

Target audience: This paper is for the attention of current holders of natural gas supply licences granted by the CER, those intending to apply for such licences to facilitate the supply of natural gas to final customers and any interested parties.

Related Documents:
CER/13/220 Review of the Natural Gas Supply Licence
CER/13/220 (a) Proposed Generic Natural Gas Supply Licence
CER/13/220 (b) Proposed Natural Gas Supply Licence Bord Gáis Éireann

For further information on this Decision 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 CER has consulted upon modifications to the natural gas supply licence to bring it up to date in terms of regulatory decisions and market developments in the gas retail markets. The consultation paper, together with two proposed natural gas supply licences (one generic and one pertaining to the incumbent), was published in September 2013 (CER/13/220). In line with legislative requirements, the CER published these documents and the proposed modifications detailed therein by posting notices in the Irish Times and furnishing both the Minister and license holders with same. 28 days was given for comment.

The key proposed modifications set out in the consultation paper are set out below.

The CER proposed 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.

The CER would note that these licence conditions were driven by a lack of competitive pressure on the decision making process within the incumbent prior to the establishment of effective competition. In a fully deregulated market, where all suppliers are free to compete and set their own tariffs, effective competition and related commercial pressures will compel all gas suppliers to behave prudently and seek to purchase gas at a competitive price without the need for applying additional regulatory requirements. The CER, having reviewed comments received, has decided to proceed with the removal of these conditions upon deregulation.

According to the last monthly competition review (CER/14/023), it is estimated that the criteria for deregulation for the domestic market will be met in April 2014.

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 sees a much stronger role for market monitoring and this is underpinned by European legislation in the 3rd Package.

In making this decision, the CER remains mindful that the removal of ex-ante price regulation may create the possibility for suppliers to adopt a commercial policy of price discrimination, based on different customer categories. The main concern is that certain cohorts of domestic customers supplied by the incumbent may get left behind in terms of enjoying the benefits of competition.

In addition, the CER acknowledges that the decision to remove the obligation of non-discrimination requires a more active engagement with the market on behalf of domestic customers. The CER will continue to monitor the market to ensure all consumers benefit from competition and to prevent certain groups of consumers from being excluded from same. Therefore, while differential tariffs based on customer categories would allow suppliers to bring in a range of products to the market, the CER, under the market monitoring framework, will continue to monitor how this approach is implemented and the impact on consumers. Where evidence of unfair discrimination is identified, the CER will intervene.

**Duty to Offer Supply**

Taking account of the need to establish a fairer method of ensuring supply of natural gas to customers in a competitive market than the designation of a single supplier, the CER also proposed that a duty to offer supply be introduced in all natural gas supply licences. This duty to offer supply refers to domestic and I&C business customers only and does not see any change to the duty to offer supply placed on Bord Gáis Energy, who will retain a duty to offer supply to all final 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 to be unreasonable:

- Where a customer is debt flagged;
- Where the supplier is not actively supplying the market of the customer; and
- Where a certain billing method or billing type is not supported by the supplier's processes
With the adoption of this proposal the CER would monitor how suppliers discharge their obligations and the terms and conditions, including tariffs, offered by suppliers.

**Full Ownership Unbundling**

The CER also proposed to remove the following conditions where the network companies are certified as having achieved Full Ownership Unbundling (FOU) certification, in line with the provisions of Directive 2009/73/EC:

- 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.

Similar to the conditions discussed above, these conditions also apply only to the incumbent. The Gas Regulation Act 2013 provides for the unbundling of Bord Gáis Éireann in line with FOU provisions of Directive 2009/73/EC, whereby Bord Gáis Éireann will become a network only company, with no involvement in the generation, storage, shipping or sale of natural gas. As such, with FOU, and Bord Gáis Éireann no longer being involved in the supply business, the CER does not consider it necessary to keep in place additional regulatory requirements ensuring the effective separation from the networks business on one supplier (in this case the supply incumbent) than others. As such the CER has decided that the conditions detailed above will fall away upon certification of Bord Gáis Éireann as having achieved FOU under the provisions of Directive 2009/73/EC.

The CER has reviewed all comments received and is proceeding with the next step of the licence modification process to implement the modifications as detailed in the consultation paper.

The modified licences are published alongside this decision paper. The CER has today by:

i. servicing a notice of the modification on holders of supply licences, and;
ii. publishing a notice of the modification in a national newspaper, initiated the procedure to implement these modified gas supply licences. In line with the procedures detailed under Section 22(3) of the Electricity Regulation Act, 1999, the licences will take effect in 28 days. This does not prejudice the right
of licensees, under Section 29 of the Electricity Regulation Act, 1999, to appeal the CER’s decision to modify the supply licences.
Table of contents

1.0 Introduction
   1.1 Commission for Energy Regulation
   1.2 Purpose of this paper
   1.3 Legislative requirements for modifications to the natural gas supply licence
   1.4 Comments received
   1.5 Structure of this paper

2.0 Review of responses to consultation
   2.1 Introduction
   2.2 Condition 23 - Purchase of natural gas
      2.2.1 Respondents’ comments
      2.2.2 CER’s response to comments
      2.2.3 CER’s decision
   2.3 Condition 24 - Terms of supply to customers
      2.3.1 Summary of respondents’ comments
      2.3.2 CER’s response to comments
      2.3.3 CER’s decision
   2.4 Condition 25 – Regulatory accounts
      2.4.1 Summary of respondents’ comments
      2.4.2 CER’s response to comments
      2.4.3 CER’s decision
   2.5 Condition 26 - Ring-fencing of the shipping and supply business and restriction on use of certain information
      2.5.1 Summary of respondents’ comments
      2.5.2 CER’s response to comments
      2.5.3 CER’s decision
   2.6 Condition 27 – Compliance officer
      2.6.1 Summary of respondents’ comments
2.6.2 CER’s response to comments
2.6.3 CER’s decision

2.7 Condition 28 – Prohibition of cross-subsidisation
2.7.1 Summary of respondents’ comments
2.7.2 CER’s response to comments
2.7.3 CER’s decision

2.8 Condition 29 – Duty of non-discrimination
2.8.1 Summary of respondents’ comments
2.8.2 CER’s response to comments
2.8.3 CER’s decision

2.9 Condition 31 – Duty to offer supply
2.9.1 Summary of respondents’ comments
2.9.2 CER’s response to comments
2.9.3 CER’s decision

2.10 Change to the structure of the natural gas supply licence
2.10.1 Summary of respondents’ comments
2.10.2 CER’s response to comments
2.10.3 CER’s decision

3.0 Conclusion and Next Steps

Appendix 1
1.0 Introduction

1.1 The Commission for Energy Regulation

The Commission for Energy Regulation (‘the CER’) is the independent body responsible for overseeing the regulation of Ireland's electricity and gas sectors. The CER was initially established and granted regulatory powers over the electricity market under the Electricity Regulation Act 1999. The enactment of the Gas (Interim) (Regulation) Act 2002 expanded the CER’s jurisdiction to include regulation of the natural gas market, while the Energy (Miscellaneous Provisions) Act 2006 granted the CER powers to regulate electrical contractors with respect to safety, to regulate natural gas undertakings involved in the transmission, distribution, storage, supply and shipping of gas and to regulate natural gas installers with respect to safety. The 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 CER is working to ensure that consumers benefit from regulation and the introduction of competition in the energy sector.

1.2 Purpose of this paper

The purpose of this paper is to set out the CER’s decision on the modification of natural gas supply licences granted by the CER under the Gas (Interim) (Regulation) Act 2002. This paper also provides information on the implementation of the modified licences (a generic licence, applicable to all gas suppliers and one pertaining to the incumbent), which are published alongside this paper.

1.3 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 on 27th September 2013 commenced the licence modification procedure with the publication of a consultation paper and a related Notice drawing the public’s attention to the proposed modifications, their nature and the reasoning for them. The notice was
published in the Irish Times and a copy of the notice was provided to all licensed natural gas suppliers. The Notice informed that any comments on / objections to the modifications should be submitted to the CER by 29th October. This provided for 28 days for comment, as stipulated in Section 20 of the Electricity Regulation Act, 1999. In accordance with the requirements of section 20 of the Electricity Regulation Act, 1999 a copy of the Notice was also furnished to the Minister for Communications, Energy and Natural Resources, Mr Pat Rabbitte. Copies of the proposed modified licences were published alongside the consultation paper.

Following the consultation process, the CER is required under Section 20(8) of the Electricity Regulation Act, 1999 to notify any respondent whose comments were not adopted on the reasons therefore and why a public hearing on the issues raised is not warranted. This is the purpose of this decision paper, which also presents the modifications to the electricity and gas licence to be implemented.

To bring the licences into force the CER must:

(i) serve a notice of the modification on holders of supply licences, and;
(ii) publish a notice of the modification in a national newspaper.

This is required by Section 22(3) of the Electricity Regulation Act, 1999, which stipulates that after the above steps have been conducted the licences will take effect in 28 days. This does not prejudice the right of licensees, under Section 29 of the Electricity Regulation Act, 1999, to appeal the CER’s decision to modify the supply licences. With the required notices issued today the modified electricity and natural gas supply licences will come into force on 1st March 2014.

1.4 Comments received
The CER received 6 submissions to the Proposed Decision Paper (CER/13/220). Submissions were received from the following organisations or individuals:
Bord Gáis Energy
Airtricity
Vayu
Gazprom
Two other submissions were received from organisations who requested that their identity and response be kept confidential. Each of the responses received, except the two aforementioned, are published alongside this paper.

### 1.5 Structure of this paper

- Section 2.0 reviews the comments received and outlines the CER’s responses and decisions to same
- Section 3.0 outlines Conclusions and Next Steps
- Appendix 1 contains a list of decisions set out by this Decision Paper

### 2.0 Review of responses to consultation

#### 2.1 Introduction

In light of recent developments in competition and the transition to full deregulation of the natural gas retail market, the CER has conducted a review of the natural gas supply licence. The CER published a consultation paper in September 2013 (CER/13/220) asking respondents to provide their views on the outcome of the review and the proposed modifications. The consultation period closed on 29th October 2013. 6 responses were received in total. This section reviews the comments received and details the associated decisions. A list of all decisions is provided in Annex 1 of this document.

The key proposed modifications, which emanated from the review, are set out below:

In the consultation paper the CER proposed 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.

According to the last monthly competition review (CER/14/023), it is estimated that the deregulation criteria set for the domestic market will be met in April 2014.
In addition, the CER proposed that the following conditions be removed where the network company is certified as having achieved FOU under the provisions of the 3rd Package:

- 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.

As previously mentioned, the Gas Regulation Bill was enacted in December 2013. The Act provides for the unbundling of Bord Gáis Éireann in line with FOU provisions of Directive 2009/73/EC, whereby Bord Gáis Éireann will become a network only company, with no involvement in the generation, storage, shipping or sale of natural gas. The act also allows for the sale of Bord Gáis Energy, the energy supply arm of Bord Gáis Éireann. It is envisaged that the sale of Bord Gáis Energy will occur in Q1 of 2014 and the certification of Bord Gáis Éireann under the FOU provisions of Directive 2009/73/EC will occur in Q3 of 2014.

In addition to the above, a new licence condition was proposed requiring natural gas suppliers to maintain regulatory accounts and in relation to a duty to offer supply. Taking account of the need to establish a fairer method of ensuring supply of natural gas to customers in a competitive market than the designation of a single supplier, the CER proposed that a duty to offer supply be introduced in all natural gas supply licences. This proposal related to domestic and I&C business customers only and did not see any change to the duty to offer supply placed on Bord Gáis Energy, who would retain an obligation to offer supply to all final customers.

The CER would reiterate that it considers its decision to introduce a duty to offer supply in all natural gas supply licences granted under Section 16 (1) (a) of the Gas (Interim) (Regulation) Act, 2002 is in line with the developments in competition and the CER's legislative duty under the Gas (Interim) (Regulation) Act 2002, to ensure that it carries out its ‘functions and exercise the power conferred on them [ ] in a manner which (b) in relation to gas, does not discriminate unfairly between holders of licences, authorisations and the Bord’.
The following subsections summarise the respondents’ comments, outline the CER’s response to same and detail the decision that the CER is minded to adopt.

2.2. Condition 23 Purchasing of natural gas

This condition requires Bord Gáis Energy to ensure that it purchases gas in a manner which will procure gas in a fair, open and transparent manner while ensuring best value and providing stability and certainty for final customers. 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 the need to ensure that Bord Gáis Energy purchases natural gas at a cost reflective price.

Consultation 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.

2.2.1 Summary of respondents’ comments

Three respondents (Bord Gáis Energy, Vayu and Gazprom) commented on the removal of the licence condition requiring Bord Gáis Energy to purchase natural gas at the best economic price upon full deregulation of the gas market. All respondents were broadly in favour of the proposal. Two respondents, Bord Gáis Energy and Gazprom, noted that the commercial pressures active in a competitive gas market will necessitate suppliers to purchase gas at the best available price. Vayu gave conditional support to this proposal, contingent on the sale of Bord Gáis Energy being completed and the implementation of a 12 month post-sale monitoring of the procurement strategy adopted by the incumbent.

2.2.2 CER’s response to comments

As stated in the consultation paper, it is the CER’s view that 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 a competitive price without the need for applying additional regulatory requirements.
As to Vayu’s comments, 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 2010\(^1\) and SI No. 630 of 2011\(^2\) (the SIs covering electricity and gas markets, respectively). The CER will, as part of its ex-post market monitoring framework, continue to monitor, inter alia, final supply tariffs charged to domestic customers to ensure that they enjoy the benefits of a competitive gas market. The CER is also currently consulting on an enhanced market monitoring framework.

2.2.3 CER’s decision

Noting the respondents’ overall agreement to the proposal to remove Condition 23 from the natural gas supply licence upon full deregulation of the gas market, the CER is to proceed with the proposed modification.

Decision 1 – Condition 23 Purchasing of natural gas

Upon full deregulation of the gas retail markets, the CER has decided to adopt the proposed modification that Condition 23, which imposes an Economic Purchase Obligation on the incumbent, be removed from the natural gas supply licence.

\(^1\) SI No. 450 of 2010

\(^2\) SI No. 630 of 2011
2.3 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 the Gas (Interim) (Regulation) Act 2002. With full deregulation, the CER considered that Condition 24 is no longer necessary and proposed its deletion from the natural gas supply licence.

### Consultation 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.

2.3.1 Summary of respondent’s comments

Four respondents (Bord Gáis Energy, Airtricity, Vayu and Gazprom) commented on the proposal to remove Condition 24 from the natural gas supply licence upon the deregulation of the domestic gas market. The responses received were broadly in favour of the proposed modification. In addition, Vayu suggested that the CER should monitor the terms and conditions for the supply of natural gas offered to the domestic gas market to ensure that “no radical changes to standard terms and conditions are introduced”. Airtricity notes that it is a primary function of the CER to ensure that competition is effective and that there may be a place for the re-regulation of tariffs where a dominant supplier is clearly shown to be exerting inappropriate influence over the market. The response goes on to state that a fundamental tenet of a competitive market is suppliers’ ability to set their own prices.

The majority of respondents referred to the legislative basis for retaining the ability to re-introduce an ex-ante regulatory regime. Bord Gáis Energy questioned the CER’s stance on competition law and also pointed to European pronouncements stemming from the 3rd Package. Respondents also highlighted concerns in relation to uncertainty as to when and how the CER will use the power to re-introduce ex-ante tariff regulation.
2.3.2 CER’s response to comments

The CER gave full consideration to the comments received and noted the respondents’ concerns in relation to the powers conferred on the CER by the Gas Regulation Act 2013. The CER also notes that no modifications to the licence were proposed in light of these new legislative powers.

It is widely acknowledged that the timely removal of price regulation can further effective competition. The CER is, however, mindful that while de-regulation should be a positive step for the market and consumers, all the effects cannot be clearly predicted in advance. The Competition Authority echoed this view in its response to the Review of the Regulatory Framework for the Retail Electricity Market’, (CER/10/058), where it stated that ‘competition law should not be relied upon in the first instance to address market outcomes that are inherently unpredictable’.

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 sees a much stronger role for market monitoring and this is underpinned by European legislation in the 3rd Package. The CER is currently consulting on this new market monitoring framework (CER/13/302). The proposed framework sets out the data to be collected from suppliers and network operators and was designed to provide the CER with an effective view of competition in electricity and gas retail markets. It is aimed at maintaining the required degree of oversight of market conditions to ensure the CER can readily identify any market issues and take any necessary action in the interest of customers.

The functions of the CER with regard to monitoring are clearly stipulated in legislation. New requirements with regard to market monitoring are stipulated in the European Union’s 3rd Package, which describes a new framework for the development of the internal electricity and gas markets. These requirements have been transposed into national legislation under S.I. No. 450 of 20101 and S.I. No. 630 of 20112. Section 9 subsection 1 (da) of the Electricity Act, 1999 requires the CER:
“To monitor the level and effectiveness of market opening and the development of competition in the supply of electricity and gas to final customers, which shall include but is not limited to monitoring-

(i) Final tariffs charged to domestic customers including those on prepayment systems,

(ii) Rates of customer switching between licensed electricity and gas suppliers,

(iii) Disconnection and de-energisation rates,

(iv) Charges for, and the execution of, maintenance services,

(v) Complaints by domestic customers,

(vi) Any distortion or restriction of competition in the supply of electricity and gas to final customers,

(vii) Whether the development and operation of competition in the supply of electricity and gas is benefitting final customers, “

While monitoring of the stipulated indicators is required, legislation specifically states that monitoring is not limited to these areas. In addition, the CER is required:

“(db) to take any actions which the Commission, on foot of the monitoring has determined to be necessary in order to -

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

(ii) ensure that final customers are benefitting from competition in the supply of electricity and gas.”

Where market monitoring indicates that action is needed to prevent a distortion or restriction of competition or to ensure that customers are benefitting from competition or, the CER will, as required by legislation, take action. Any action taken will be measured and commensurate with the findings of the market monitoring activities. Though ultimately legislation provides for the re-introduction of price regulation, and the CER will re-impose price regulation if required, such a step will be used as a last resort; where alternatives have been exhausted.
2.3.3 CER’s decision

While noting the comments raised by respondents in relation to the CER’s ability to re-introduce an ex-ante regulatory regime, the CER acknowledges the overall agreement to the proposal to remove Condition 24 from the natural gas supply licence upon full deregulation of the gas market and intends to adopt the consulted upon modification.

**Decision 2 – Condition 24 Terms of supply to customers**

Upon full deregulation of the gas retail markets, the CER has decided to adopt the proposed modification that Condition 24 be removed from the natural gas supply licence.

2.4 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 2004. In light of this statutory obligation on all natural gas suppliers to maintain regulatory accounts, the CER considers that this should be reflected in the licence, as is the case on the electricity side, where all supply licences have a condition requiring the licensee to retain regulatory accounts.

**Consultation 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.

---

3 SI No. 452 of 2004
2.4.1 Summary of respondents’ comments

Four respondents commented on the proposal to introduce a new licence condition in the natural gas supply licence to reflect suppliers’ obligation to retain regulatory accounts. Two respondents were in agreement with the proposal, noting that it is consistent with the CER approach in relation to the electricity supply licence. One respondent (Vayu) did not support the proposal, based on the fact that the obligation to maintain regulatory accounts is already provided for in the Gas (Interim) (Regulation) Act, 2002. The fourth respondent (Gazprom), based on a similar argument, failed to see any benefits of duplicating the obligation in the natural gas supply licence.

2.4.2 CER’s response to comments

As noted by the respondents who commented on the proposed modification, the obligation to maintain regulatory accounts is already stipulated in legislation. It is therefore the CER’s view that introducing this new licence condition into the natural gas supply licence does not translate into an extra regulatory burden on licence holders. The CER considers it prudent to reflect this legislative requirement in the licence, as is the case of the electricity supply licence.

2.4.3 CER’s decision

The CER notes the respondents’ general agreement to the proposal to introduce a licence conditions in all natural gas supply licences to reflect statutory obligation on suppliers to maintain regulatory accounts. The CER will proceed with the proposed modification.

<table>
<thead>
<tr>
<th>Decision 3 – Condition 25 Regulatory Accounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>The CER has decided to introduce a licence condition in all natural gas supply licences to reflect the statutory obligation on suppliers to maintain regulatory accounts.</td>
</tr>
</tbody>
</table>
2.5 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 consultation proposed that the need for this licence condition falls away with FOU.

Consultation 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 FOU provisions of the 3rd Package. Are you in favour of this proposal? Outline reasons for agreement or disagreement.

2.5.1 Summary of respondents’ comments

Three respondents commented on the proposal that Condition 26 be removed from the natural gas supply licence where Bord Gáis Éireann is certified under the FOU provisions of Directive 2009/73/EC. The respondents were broadly in favour of the proposed modification. Two respondents, Vayu and Gazprom, conditioned their support of the proposal on: (i) the enactment of the Gas Regulation Bill 2013 and (ii) the sale of Bord Gáis Energy.
2.5.2 CER response to comments

The Gas Regulation Bill 2013 was approved by the Government in July 2013 and enacted in December 2013. The legislation underpins the unbundling of the network companies under the FOU provisions of Directive 2009/73/EC. With FOU, Bord Gáis Éireann will become a networks only company and have no involvement with any supply business. In light of this, the need for this licence condition falls away.

As mentioned previously, under the provisions of Directive 2009/73/EC, FOU is expected to occur in Q3 of 2014.

2.5.3 CER’s decision

The CER is to proceed with the proposed modification to remove Condition 26 from the natural gas supply licence upon Bord Gáis Éireann being certified as FOU compliant under Directive 2009/73/EC.

**Decision 4 – Condition 26 Ring-fencing of the shipping and supply businesses and restriction on use of certain information**

The CER has decided to adopt the proposed modification that Condition 26 be removed from the natural gas supply licence where Bord Gáis Éireann is certified under the FOU provisions of Directive 2009/73/EC.

2.6 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. These duties and obligations have extended beyond those placed on all other suppliers. Upon deregulation of the domestic gas market and the unbundling of Bord Gáis Éireann, the incumbent will be primarily in the same position as any other supplier and, as such, the requirement for placing additional regulatory burdens on it is unnecessary.
Consultation 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 company has been certified as having achieved FOU under the provisions of Directive 2009/73/EC. Are you in favour of this proposal? Outline reasons for agreement or disagreement.

2.6.1 Summary of respondent’s comments

Three respondents commented on the proposed modification to the natural gas supply licence. The arguments were similar to those put forward for Condition 26, namely two extra conditions attached to the support of the proposal: (i) the enactment of the Gas Regulation Bill 2013 and (ii) the sale of Bord Gáis Energy.

2.6.2 CER’s response to comments

Similar to the response in respect of Condition 26, there is no intention to remove this condition from the natural gas supply licence until the Gas Regulation Bill has been enacted (which is already the case) and until Bord Gáis Éireann is certified under the FOU provisions of Directive 2009/73/EC.

2.6.3 CER’s decision

The CER notes the respondents’ overall agreement to the proposal to remove Condition 27 from the natural gas supply licence upon the certification of Bord Gáis Éireann as having achieved FOU under the 3rd Package. As such, the CER will proceed with the proposed modification.

Decision 5 – Condition 27 Compliance Officer

The CER has decided to adopt the proposed modification to the natural gas supply licence that Condition 27, pertaining to the obligation placed on Bord Gáis Energy to provide for a compliance officer, be removed from the natural gas supply licence upon full deregulation of the gas market and where Bord Gáis Éireann has been certified as FOU.
2.7 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 that ‘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).’

The CER considered that the necessity for the restrictions currently in place to preclude cross-subsidies between the Shipping and Supply businesses and any other businesses of Bord Gáis Éireann fall away where Bord Gáis Éireann is certified as FOU, in line with the provisions of Directive 2009/73/EC. As such, the CER proposed that this licence condition be deleted from the natural gas supply licence.

Consultation 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 is certified as FOU. Are you in favour of this proposal? Outline reasons for agreement or disagreement.

2.7.1 Summary of respondent’s comments

Three respondents commented on this proposed modification. Vayu noted that the domestic gas retail market has not been deregulated yet. Their support is conditional on this event and the enactment of the Gas Regulation Bill 2013. Gazprom’s support is subject to the unbundling of Bord Gáis Éireann under the FOU provisions of Directive 2009/73/EC and the sale of Bord Gáis Energy. Bord Gáis Energy agrees with the removal of this licence condition when Bord Gáis Éireann is certified as FOU under the provisions of Directive 2009/73/EC.
2.7.2 CER’s response to comments

As with Conditions 26 and 27, the reason why this licence condition falls away is the unbundling of Bord Gáis Eireann. The Gas Regulation Act, 2013 allows for the unbundling process, whereby Bord Gáis Éireann will become a network only company, with no involvement in the generation, storage, shipping or sale of natural gas. With Bord Gáis Éireann no longer being involved in supply activities, the need for additional regulatory safeguards to ensure that the network company treats all suppliers on an equal basis falls away.

2.7.3 CER’s decision

Noting the respondents’ overall agreement to the proposal to remove Condition 28 from the natural gas supply licence upon certification of Bord Gáis Éireann as FOU under the provisions of Directive 2009/73/EC, the CER is to proceed with the proposed modification.

**Decision 6 – Condition 28 Prohibition of Cross Subsidies**

The CER has decided to adopt the proposed modification to the natural gas supply licence that Condition 28, pertaining to prohibition of cross subsidies, be removed from the natural gas supply licence upon certification of Bord Gáis Éireann’s as FOU under the provisions of Directive 2009/73/EC.

2.8 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.

**Consultation 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.
2.8.1 Summary of respondents’ comments

Three respondents commented on this proposed modification. All respondents were broadly in agreement with the CER’s proposal to remove the duty of non-discrimination from the natural gas supply licence upon full deregulation of the gas retail market and where Bord Gáis Éireann has been certified as FOU. The respondents also noted that the CER did not introduce a duty of non-discrimination in the electricity supply licence.

2.8.2 CER’s response to comments

The CER acknowledges the respondents’ overall agreement to the removal of the duty not to discriminate upon full deregulation of the gas domestic market.

2.8.3 CER’s decision

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 to address potential issues.

Noting the respondents’ overall agreement to the proposal to remove Condition 29 from the natural gas supply licence upon full deregulation of the gas market and Bord Gáis Éireann being certified as FOU under the provisions of Directive 2009/73/EC, the CER will proceed with the proposed modification.

The CER remains mindful that the removal of ex-ante price regulation may create the possibility for suppliers to adopt a commercial policy of price discrimination, based on different customer categories. The main concern is that certain cohorts of domestic customers supplied by the incumbent may get left behind in terms of enjoying the benefits of competition.

The CER acknowledges that this decision requires a more active engagement with the market on behalf of domestic customers. The CER will continue to monitor the market to ensure all consumers benefit from competition and to prevent certain groups of consumers from being excluded from same. Therefore, while differential tariffs based on customer categories would allow suppliers to bring in a range of products to the market, the CER, under the market monitoring framework, would
continue to monitor how this approach is implemented and the impact on consumers. Where evidence of unfair discrimination is identified, the CER would intervene.

**Decision 7 – Condition 29 Duty of non-discrimination**
The CER has decided to adopt the proposed modification to the natural gas supply licence that Condition 29, pertaining to the duty of non-discrimination, be removed from the natural gas supply licence upon full deregulation of the gas market and upon certification of Bord Gáis Éireann’s networks company as having achieved FOU under the 3rd Package provisions.

2.9 **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.

Taking account of the need to establish a fairer method of ensuring supply of natural gas to final customers in a competitive market than the designation of a single supplier, the CER proposed that a duty to offer supply be introduced into all supply licences. It was proposed that the duty to offer supply would pertain to domestic and I&C business customers only, while specifying certain instances where requests for supply are not reasonable. It also provided for the CER to determine whether other requests are reasonable or not.

In the consultation paper, the CER considered 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 stated that the above should provide sufficient guidance to determine, in the majority of cases, whether a request is reasonable. A mechanism for seeking clarity is also detailed in the licence condition. This proposal does not see any change to the duty to offer supply placed on the Bord Gáis Energy, who will retain an obligation to supply all final customers, regardless of their category.

Consultation 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.

2.9.1 Summary of respondent’s comments

All six respondents commented on the condition providing for a duty to offer supply. Two respondents commented on general aspects of the condition relating to the reasonableness of a request and the terms of an offer to supply made to a final customer. They further emphasised the need to differentiate between the credit meter and the prepaid meter segments within the domestic sector and the fact that a supplier who enters the market intent on supplying gas solely on the prepayment model should not be obligated to offer supply of gas to credit meter customers. These respondents advised that where the customer who submits a supply request cannot meet one condition of supply within a supplier’s standard terms and conditions of supply (i.e. the prepaid meter cannot be installed), the supplier should not be obligated to offer alternative terms of supply.
The other four respondents commented on the duty to offer supply being extended to all suppliers and the market segments proposed to be covered by this condition. They supported the CER’s proposal to extend the duty to offer supply to all natural gas licence holders.

Of these respondents, three pointed to the UK, where the duty to offer supply applies only to the domestic market. Gazprom sought guidance on the application of the obligation and clarification on whether sites with consumption levels below 73,000 KWh constitutes a distinct active market. Vayu suggested a threshold of 73,000 kWh above which the duty to offer supply should not apply.

Airtricity, recognising the need to protect small commercial customers, suggested that the term I&C be replaced with ‘Small Business’ or ‘Micro Businesses’. However, their opinion is that the I&C business segment is too broad and may include large industrial customers. In addition, Airtricity considers that the obligation to offer supply should not place additional costs or risks on suppliers and that the terms and conditions associated with this duty should be regarded as a commercial decision for the supplier.

Bord Gáis Energy noted the consistent approach taken in relation to the duty to offer supply upon the deregulation of the domestic electricity market and pointed to the fact that in the electricity supply licence this obligation only extends to the level of small business customers. Bord Gáis Energy stated that the I&C market is highly competitive and this level of regulation is unnecessary.

In addition, Bord Gáis Energy proposed two extra conditions to be inserted into the natural gas licence, on the model of the UK natural gas supply licence. One condition relates to the reasonableness of a request to supply natural gas to a domestic premise, where a supplier is already supplying gas, and has given at least seven working days’ notice of its intention of doing so. The second proposed condition relates to the situation where the supplier has asked the customer to pay a security deposit and the customer has failed to do so.
2.9.2 CER’s response to comments

The duty to supply presented in the proposed modification requires a licensed supplier to meet all reasonable requests for natural gas, specifically addressed to the supplier. On receipt of such a request, the supplier would be obligated to:

a) offer to enter into a supply contract to supply Natural Gas to the premises in respect of which the supply is requested; and
b) where the terms offered are accepted by the Final Customer, give a supply of Natural Gas to those premises in accordance with the terms offered

The CER would reiterate that it considers its decision to introduce a duty to offer supply in all natural gas supply licences granted under Section 16 (1) (a) of the Gas (Interim) (Regulation) Act, 2002 is in line with the developments in competition and the CER’s legislative duty under the Gas (Interim) (Regulation) Act 2002, to ensure that it carries out its ‘functions and exercise the power conferred on them [ ] in a manner which (b) in relation to gas, does not discriminate unfairly between holders of licences, authorisations and the Bord’.

The CER notes respondents’ comments as to the reasonableness of a request from a customer for a billing method not supported by the supplier (e.g. a customer requesting a supplier who exclusively offers a prepayment solution to serve them without a prepayment meter). The CER would consider such a request as unreasonable.

With the adoption of this proposal the CER would monitor how suppliers discharge their obligations and the tariffs offered.

With regard to the proposal to include the I&C business segment in the duty to offer supply, the CER would draw the respondents’ attention to a series of CER decision papers which reviewed the tariff structure for various customer categories within the gas market (CER/07/097 – Fuel variation tariff, CER/07/105 – Domestic and Small Industrial and Commercial, CER/07/170 – Regulated Tariff Formula). Decision paper CER/07/105 titled ‘Revised Gas Tariff Structures for Domestic, Smaller Industrial and Commercial Customers’ details the parameters used to identify the I&C sector (the Supply Point Capacity lower than 3,750 kWh and the Consumption Level lower than 73,000 kWh) and describes the tariffs associated with this customer category:
‘1. Industrial or commercial customers of BGS below the 73,000kWh threshold will be offered the ‘Small Business User’ tariff. This will consist of a small standing fixed charge and a flat variable charge. The standing charge is designed to cover BGS’s administrative cost to serve.

2. Industrial or commercial customers of BGS above the 73,000kWh threshold will be offered the ‘Medium Business User’ tariff. This will consist of a site-specific fixed monthly charge and a flat variable charge.’

It was also decided that any NDM customers whose Supply Point Capacity is above this threshold would not be eligible for these tariffs.

The same market classification has been used by the CER in its Annual Report. The CER also notes that natural gas consumption in the case of some households may reach the 73,000 kWh figure.

As to Bord Gáis Energy’s proposed additional conditions, the CER would highlight that the CER will monitor how suppliers discharge their obligations and the terms and conditions offered, including tariffs. In addition, Condition 24 2(b) (as detailed in the proposed generic natural gas supply licence) and Condition 24 1(b) (as detailed in the proposed natural gas supply licence pertaining to the incumbent) already provides for the discontinuation of supply.

The same provisions are made for the duty to offer supply pertaining to the electricity supply licence.

2.9.3 CER’s decision

While noting the comments received from respondents to this proposed modification, the CER has decided to adopt the consulted upon modification to the duty to supply.

**Decision 8 – Condition 31 Duty to offer supply**

The CER has decided to adopt the proposed modifications to the natural gas supply licence, namely:

(i) impose a duty to offer supply on all licence holders. This new duty on all suppliers will apply to domestic customers and IC customers

(ii) retain the duty to offer supply on Bord Gáis Energy (this duty is not limited to IC sector of the business market)
2.10 Change in the structure of the Natural Gas Supply Licence

The proposals put forth in the consultation document saw 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 were proposed to be removed due to full deregulation and the anticipated certification of Bord Gáis Éireann as FOU under Directive 2009/73/EC. The proposals saw the conditions applied to the incumbent being further aligned with those of all other suppliers. With the proposed extent of this alignment it was deemed no longer necessary to split the licence into two sections. In addition, section B as it currently stands only applies to Bord Gáis Éireann. However, under the FOU model, Bord Gáis Éireann will no longer be involved in the supply business. In light of this, it was proposed to change the licence so it is in one section. Additional duties of the incumbent would only be included in the incumbent’s licence. Finally please note that all references to Bord Gáis Éireann were retained 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.

Consultation 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.

2.10.1 Summary of respondents’ comments

Three respondents commented on this proposed modification. All respondents were in agreement with the proposal to change the structure of the natural gas supply licence so it only has one section and that any additional obligations placed on the incumbent would only be included in the licence granted to them. Vayu conditioned its support to the proposed modification on the enactment of the Gas Regulation Bill 2013, the unbundling of Bord Gáis Éireann’s under the FOU provisions of Directive 2009/73/EC and the sale of Bord Gáis Energy. Bord Gáis Energy was also in favour of the proposed modification. In addition, they queried the necessity of having two
separate natural gas supply licences, one generic and one pertaining to the incumbent.

2.10.2 CER’s response to comments

The CER notes the respondents’ comments to the proposed modification and the overall agreement to this. The difference between the two proposed licences relates to the market segments covered by the duty to supply. The CER proposed to retain the duty to offer supply on Bord Gáis Energy as is (i.e. covering both domestic and business sector) in conjunction with introducing a duty to offer supply on all suppliers, covering the domestic and I&C customers. This would only apply where the supplier is active in the market from which the customer is requesting supply.

The proposal that Bord Gáis Energy would retain the duty to supply as is (i.e. covering the entire business sector) warrants the need for two distinct licences.

2.10.3 CER’s decision

The CER notes the overall agreement with the proposal to change the structure of the natural gas supply licence so that licence conditions are presented in a single section. As stated in the consultation paper, any additional obligations pertaining to the incumbent will be presented in its gas supply licence. The CER will publish this licence in the interest of transparency.

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 has decided to adopt the proposal that the structure of the licence be changed so that conditions are presented in a single section – hence removing the section only applicable to Bord Gáis Éireann. Any additional licence obligations on the incumbent would then only be present in the incumbent’s licence, which the CER has published in the interest of transparency.
3.0 Conclusions and Next Steps

The CER has reviewed in full comments received on the proposed modifications to the natural gas supply licences. Following this review, the CER will proceed with the implementation of the proposed modifications. The modified licences are published alongside this decision paper. The CER has today by:

(i) servicing a notice of the modification on holders of supply licences, and;

(ii) publishing a notice of the modification in a national newspaper.

initiated the procedure to implement these modified electricity and gas supply licences. In line with the procedures detailed under Section 22(3) of the Electricity Regulation Act, 1999, the licences will take effect in 28 days. This does not prejudice the right of licensees, under Section 29 of the Electricity Regulation Act, 1999, to appeal the CER’s decision to modify the supply licences.

Finally the CER would note that this decision sees certain conditions falling away upon deregulation and others falling away after Bord Gáis Éireann has been certified as FOU under the provision of Directive 2009/73/EC. These conditions will automatically fall away at the relevant times – no further publications will be published other than reminders of this fact in any relevant notifications pertaining to deregulation and FOU.
**Annex 1**

### Decision 1 – Condition 23 Purchasing of natural gas
Upon full deregulation of the gas retail markets, the CER has decided to adopt the proposed modification that Condition 23, which imposes an Economic Purchase Obligation on the incumbent, be removed from the natural gas supply licence.

### Decision 2 – Condition 24 Terms of supply to customers
Upon full deregulation of the gas retail markets, the CER has decided to adopt the proposed modification that Condition 24 be removed from the natural gas supply licence.

### Decision 3 – Condition 25 Regulatory Accounts
The CER has decided to introduce a licence condition in all natural gas supply licences to reflect the statutory obligation on suppliers to maintain regulatory accounts.

### Decision 4 – Condition 26 Ring-fencing of the shipping and supply businesses and restriction on use of certain information
The CER has decided to adopt the proposed modification that Condition 26 be removed from the natural gas supply licence where Bord Gáis Éireann is certified under the FOU provisions of Directive 2009/73EC.

### Decision 5 – Condition 27 Compliance Officer
The CER has decided to adopt the proposed modification to the natural gas supply licence that Condition 27, pertaining to the obligation placed on Bord Gáis Energy to provide for a compliance officer, be removed from the natural gas supply licence upon full deregulation of the gas market and where Bord Gáis Éireann has been certified as FOU, under the provisions of Directive 2009/73/EC.
Decision 6 – Condition 28 Prohibition of Cross Subsidies
The CER has decided to adopt the proposed modification to the natural gas supply licence that Condition 28, pertaining to prohibition of cross subsidies, be removed from the natural gas supply licence upon full deregulation of the gas market and where Bord Gáis Éireann has been certified as having achieved FOU.

Decision 7 – Condition 29 Duty of non-discrimination
The CER has decided to adopt the proposed modification to the natural gas supply licence that Condition 29, pertaining to the duty of non-discrimination, be removed from the natural gas supply licence upon full deregulation of the gas market and where Bord Gáis Éireann has been certified as FOU.

Decision 8 – Condition 31 Duty to offer supply
The CER has decided to adopt the proposed modifications to the natural gas supply licence, namely:

(i) impose a duty to offer supply on all licence holders. This new duty on all suppliers will apply to domestic customers and IC customers

(ii) retain the duty to offer supply on Bord Gáis Energy (this duty is not limited to IC sector of the business market)

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 has decided to adopt the proposal that the structure of the licence be changed so that conditions are presented in a single section – hence removing the section only applicable to Bord Gáis Éireann. Any additional licence obligations on the incumbent would then only be present in the incumbent's licence, which the CER has published in the interest of transparency.