

CER Consultation Paper CER/13/220 – Review of the Natural Gas Supply Licence

Vayu welcomes the opportunity to comment on the Commission for Energy Regulation's ("CER") consultation paper which considers changes to the natural gas supply licence - CER/13/220. The proposed changes are considered as being necessary in the light of proposed legislation that would see the final step of the unbundling of Bord Gáis Éireann, full deregulation of the retail market and recent developments in competition.

It is clear that licence changes would be required to reflect a changed market place following the proposed sale of Bord Gáis Energy ("BG Energy"). However, the CER would appear to have adopted a command and control approach regarding how it will allow a competitive market evolve and develop. We note that the CER has worked closely with the Department of Communications, Energy and Natural Resources ("DCENR") in developing the measures proposed in the Gas Regulation Bill 2013.

A major concern for Vayu is that the CER has sought to be given powers to re-impose a regulatory environment based on ex-ante price regulation. This could result in suppliers being forced to amend charges to their Customers if the CER believes that abuse of a dominant position is developing in the market.

Whilst we support measures to avoid abuse of dominance, in our opinion, this measure would be an unacceptable, retrograde step for the market and should not be approved. Allowing the CER to give direction to suppliers in respect of their tariffs without referring the issue to the Competition Authority creates additional commercial risks for suppliers.

It will create barriers to entry for new competition, reduce existing competition and add further costs to a marketplace that already operates within extremely tight margins. Furthermore, it is contrary to every pronouncement by regulatory authorities across Europe that de-regulation is a "step recognised and promoted to further effective competition and one that should deliver real benefits to Customers"¹.

We are disappointed that the CER did not seek to engage with industry at any point prior to the launch of the Gas Regulation Bill 2013 ("Bill") on issues it sought to resolve. Stakeholders have a vested interest in the future of the market and we believe we could have made a positive contribution to the development of the Bill. It is noted that there is no regulatory impact assessment with this consultation paper. We believe this would have proved beneficial to the process.

The proposed wording for amending the Gas (Amendment) Act 1987 allows the CER to carry out an examination of the costs underlying charges to Customers. However, the CER is silent

¹ ERGEG, Status Review of End-User Price Regulation – January 2010

on how it proposes to carry out such examinations. It should give suppliers a detailed list of the transparent circumstances under which this examination and direction would take place, the criteria to be used and an escalation methodology from examination to direction with respect to any decisions. Otherwise, it undermines the basis of suppliers business models; it would not allow them develop propositions for market sectors or negotiate contracts on a bi-lateral basis.

The paper notes that the CER would consider a re-imposition of regulatory controls as a last resort, but again is silent on how the CER would exhaust “all other effective alternatives”. Industry should be given the opportunity to comment on these alternatives.

Customer protection is an important factor when considering making changes to the market. These proposed changes in the regulatory environment would appear to be geared towards ensuring that household Customers will continue to benefit from this protectionist approach.

In our view, the CER should consider adopting a two tier approach to this licence review – in line with its oversight of other areas of the retail market i.e. domestic / non-domestic. For example, the CER has required suppliers to have different codes of practice for suppliers to household and to non-household Customers. Furthermore, the CER’s approved process for debt-flagging treats large industrial and commercial Customers differently to the rest of the market.

EU Directive 2009/73/EC details the specific market monitoring activities the CER must carry out to observe distortions and restrictions to competition (Article 41 (1)(j)) and restrictive contracts (Article 41(1)(k). In situations where this activity has been confirmed it must bring “any relevant cases to the relevant competition authorities”. We believe that it now time to review the cooperation agreement between the CER and the Competition Authority, which pre-dates much of the new EU legislation to reflect these requirements.

Our comments on specific questions follow:

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?

We would give conditional support to this proposal. This would be subject to the sale of BG Energy being completed. In addition, a demonstration that, for a period of twelve (12) months post-sale that BG Energy demonstrates a procurement strategy that is consistent with its previous obligations and would be adopted by a prudent operator.

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?

We would give qualified support to this proposal. As the focus of this Condition was household Customers, we would suggest that the CER monitors the terms offered to this sector of the

market more closely to ensure that no radical changes to standard terms and conditions are introduced.

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?

Vayu does not support this proposal as the obligation to prepare regulatory accounts is already provided for in legislation – Gas (Interim) (Regulation) Act, 2004. In any event the CER can request this information under Condition 4.

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?

It would seem logical to remove this condition. We would support such a proposal in the event of full ownership unbundling of Bord Gáis Networks and not before the Gas Regulation Bill 2013 is passed into fully enacted legislation. Furthermore the sale of BG Energy must have been completed before we would support its removal.

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?

As with our answer to Question 4, it would seem logical to remove this Condition. We would support such a proposal in the event of full ownership unbundling of Bord Gáis Networks and not before the Gas Regulation Bill 2013 is passed into fully enacted legislation. In addition, the sale of BG Energy must have been completed before this condition should be removed.

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?

The Irish energy market has not yet become fully deregulated. Until such time as the Gas Regulation Act 2013 has passed all stages and passed into law we would not support the removal of this condition. In addition, the sale of BG Energy must have been completed before this condition should be removed.

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?

Although the CER made a decision not to introduce a non-discrimination clause in the electricity retail market, the CER recognises that retaining a duty of non-discrimination could expose and remedy predatory pricing. With our wide experience of operating in the most competitive sector of the Irish energy market i.e. the large industrial and commercial sector of the natural gas retail market we are in agreement with this view.

The CER should be very conscious of the current structure of the energy sector and the fact that a number of companies have extensive interests in both natural gas and electricity. It must also take account of the impact on the market of there is further consolidation in the market with the proposed sale of BG Energy.

The paper notes that the CER would intervene in the market if it found evidence of unfair discrimination. We agree with this position, but if a duty of non-discrimination was required, this market monitoring activity by the CER should not be too onerous.

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?

We believe that the proposal should only apply to suppliers who supply domestic and small business Customers. I&C Customers with an annual consumption above a given threshold (say, 73,000 kWh) should be in a position to negotiate with competing suppliers. In the UK the duty to supply only applies to domestic Customers. It is not clear why the CER would seek to apply a more stringent requirement in a market that represents only 5% of the UK market. This would also accord with a requirement to maintain Customer protection.

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?

Overall, we believe that a single licence for all suppliers would be conducive to a better functioning market and support the view that the additional licence obligation placed on the incumbent would only be included in the natural gas supply licence granted to them.

However, we would caution that this should not be made effective until all relevant legislation has been passed into law, full ownership unbundling of BG Networks is effective and that the sale of BG Energy has been completed.