



MARKET MONITORING IN THE ELECTRICITY AND NATURAL GAS  
RETAIL MARKETS

SSE AIRTRICITY RESPONSE TO  
THE CER

2014

## INTRODUCTION

SSE Airtricity welcomes the opportunity to comment on the CER's paper "Market monitoring in the Electricity & Natural Gas Retail Markets".

SSE Airtricity is the largest independent supplier operating in Ireland with over 800,000 customers served across both electricity and natural gas markets. SSE Airtricity is committed to the development of competition in energy markets in Ireland and to presenting its customers with choice and quality customer services. SSE Airtricity believes monitoring the retail markets in an appropriate fashion is essential to the CER in achieving its role to ensure the effectiveness of competition. However, there remain a number of valid concerns with respect to the proposals put forward by the CER in their current form. SSE Airtricity is also a member of the EAI and fully supports the EAI response to this consultation.

## GENERAL COMMENTS

SSE Airtricity welcomes the small changes made to the original 2011 proposals as reflected in the revised paper, however during that consultation process serious concerns were raised with respect to the level of detail being requested by the CER, the purpose of the information requests and the ability of suppliers to meet those requests given the format asked for.

SSE Airtricity is concerned that in collecting and publishing a wide range of indiscriminate information, the CER will inappropriately represent the energy industry. SSE Airtricity supports the CER in its monitoring role. However, monitoring of the energy markets should not place disproportionate burden on suppliers, nor should it lead to the misrepresentation of how the markets operate. It is clear from legislation that there is a requirement for certain aspects of the energy markets to be monitored by the CER. These are clearly set out and the power provided to the CER 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) That final customers are benefiting from competition in the supply of electricity and natural gas*

We note that throughout the consultation paper, where any respondent has indicated concern with respect to the requirements for information provision, the CER has qualified its request by reference to it being 'necessary' in order for the CER to fulfil its statutory role. Where the inclusion of additional requirements not set out by the EU Directives has been questioned the CER has referenced a 'catch all' clause in supplier licences.

While SSE Airtricity recognises that the CER may be able to use a number of aspects of both legislation and licensing to request information, the use of those powers in a disproportionate way was not intended when they were given to the CER. SSE Airtricity looks to the CER's own definitions of the principles of Better Regulation as set out in Appendix 3:

***Necessity*** – *Is this regulation necessary? Can we reduce red tape in this area?*

***Effectiveness*** – *Is the regulation properly targeted? Is it going to be properly complied with and enforced?*

***Proportionality*** – *Are we satisfied that the advantages outweigh the disadvantages of the regulation? Is there a smarter way of achieving the same goal?*

***Transparency*** – *Have we consulted with stakeholders prior to regulating? Is the regulation in this area clear and accessible to all? Is there good back-up explanatory material?*

***Accountability*** – *Is it clear under the regulation precisely who is responsible to whom and for what? Is there an effective appeals process?*

***Consistency*** – *Will the regulation give rise to anomalies and inconsistencies, given the other regulations that are already in place in this area? Are we applying best practice developed in one area when regulating other areas?*

It is clear to SSE Airtricity that a number of the proposals set out in the consultation seek to increase red tape putting in place unnecessary reporting obligations that go over and above both the requirements of legislation and ERGEG guidelines.

SSE Airtricity questions whether a number of measures set out in the consultation are appropriately targeted. Rather than identifying a particular concern and targeting this, the CER has decided to proactively seek information in relation to any area that may become a concern at any stage in the development of competition regardless of the cost to meet the requirements. It is unclear how the CER will measure and use the

information required and in turn how it will be used with respect to enforcement.

It is clear based on the responses made by respondents, including the Competition Authority, that the collection of certain information, in particular information regarding margins, will be costly to do, require a considerable effort and may not provide any benefit. Therefore the proposals could not be considered proportionate within the definition provided.

SSE Airtricity recognises that the CER has consulted with stakeholders with respect to its proposals, however can see no real consideration of the concerns raised or assurance being given with respect to those concerns.

SSE Airtricity also notes that despite the CER making reference to its ability to determine what information is to be considered commercially sensitive and requirements of the FOI Act, no assurance has been given in any aspect of the consultation that the information specifically highlighted by suppliers as commercially sensitive would be considered as commercially sensitive by the CER. SSE Airtricity can find no requirement in the legislation to publish information collected through the monitoring process SI 450 of 2010 states it is a function of the CER to:

*Publish at least annually*

*(i) Any relevant information arising from the monitoring*

This requirement is in relation to the output of the monitoring process rather than the original data gathered.

As set out in our previous consultation response, being part of a public limited company restricts the nature and timing of information we can release. Reporting on such information and in such detail as proposed within the monitoring mechanism could potentially result in putting not just SSE Airtricity Ltd, but also the SSE group, into a commercially disadvantaged position, as well as into contractual breaches. As such, SSE Airtricity requests that the CER reconsider the information requested, in particular with respect to publication.

## SPECIFIC COMMENTS

### **Retail Margin**

SSE Airtricity would like to raise serious concern with respect to the requirement for commercially sensitive information regarding supplier costs

and identifying retail margins to be submitted to the CER. As set out by a number of respondents, the information requested is not available in the format requested by the CER, is considered commercially sensitive and due to the differences in suppliers operations will not be comparable. However, the CER has set aside these responses and determined this information is necessary. It is unclear why, in addition ignoring the valid submissions made by suppliers, the CER has failed to consider the submission made by the Competition Authority which questions the benefit in collecting this information, the ability to use this information for the purpose intended and the clear guidance that *'in competitive markets, efficient cost and prices are revealed over time by the competitive process of offer and counter offer and entry and exit.'*

The CER has repeated again and again that this information is necessary to fulfil its role with respect to competition monitoring. However it is unclear how this information is necessary, at this time, and will be used for this purpose. SSE Airtricity is concerned that the CER, in its previous decisions with respect to the energy markets, set aside long established tools for measuring competition effectiveness such as market share and dominance and despite this information being freely available has failed to use it to ensure the effectiveness of retail competition. Instead of using already available market indicators, the CER is seeking to craft supplier information into a form that does not currently exist and does not have clear benefit to either the industry or consumers with respect to competition.

It is SSE Airtricity's view that the requirement with respect to retail margins is not proportionate given the lack of benefit it would bring. SSE Airtricity reiterates the Competition Authority point *'high profits may be the result of efficient operations or outperformance and it would be antithetical to the competitive process if a supplier was punished in some way for superior performance. Alternatively, low reported margins might be used as a means of deterring entry. Given that the accurate measurement of retail margins is so difficult, any requirement on profit margins may not be particularly informative.'*

#### **Monitoring of Self Disconnection**

SSE Airtricity would like to highlight that there are many reasons why a PAYG meter may 'self' disconnect. This may be because the customer has run out of credit and is unable to top up, but it may also be, and regularly is, because of a range of other reasons including the property being used for short term lets, habitual disconnection when away from the property, only occupied certain days of the week, occupant on holidays, other fuel source available

etc. In particular this is the case with respect to lifestyle meters which are often installed by landlords.

While we recognise the merit in attempting to monitor the level of 'self' disconnection, given the range of reasons that may lead to this happening, we do not consider it appropriate to publish this information until the CER has carried out an appropriate level of monitoring and established the trends and reasons behind 'self' disconnection. SSE Airtricity is concerned that in the absence of adequate examination and accompanying explanation assumptions will be inappropriately drawn from any figures published.

#### **Requirements regarding Vulnerable Customers**

SSE Airtricity seeks confirmation in the decision paper that any monitoring of vulnerable customers is with respect to registered vulnerable customers. Separately, SSE Airtricity believes that in advance of publishing vulnerable customer specific information, it is necessary for the CER to ensure all suppliers are gathering and representing information in the same way. We note that 'new' entrant suppliers may have higher levels of registered vulnerable customers as the requirement to register customers occurred after the development of competition. As such, presentation of data needs to be carefully considered so as not to distort the impression of the industry.

#### **Price Spread**

SSE Airtricity can see the benefit in showing customers the price spread in the market; however this should be relative to current and available tariffs only. Some suppliers may have legacy tariffs that could artificially distort customers' impression of what is available to them if they are presented in the price spread.

### **CONCLUSION**

In summary, SSE Airtricity supports the collection of information that will genuinely assist the CER in monitoring the retail markets. It is essential in collecting this information that the CER takes appropriate action where issues are identified that impact competition. However, in deciding what information to collect and also publish, SSE Airtricity believes it is essential for the CER to consider the impact of their actions on the industry. In line with the principles of Better Regulation, the monitoring requirements should be proportionate and necessary and not place undue burden on market participants.