Response by Energia to Commission for Energy Regulation Decisions & Further Consultation CER/16/287

REVIEW OF THE SUPPLIER'S HANDBOOK DECISION AND FURTHER CONSULTATION

25th November 2016

1. Introduction

Energia welcomes the opportunity to respond to this further consultation on the review of the Supplier's Handbook being undertaken by the Commission for Energy Regulation (CER). The Handbook is an important retail market document that regulates the activities of suppliers with the objective of standardising the approaches of suppliers to the market and providing customers with the benefits of competition in the retail market. The Handbook also gives certainty to suppliers when developing products and engaging with the market, that they are doing so within the requirements of the relevant Code(s) of Practice. The Handbook greatly assisted Energia in preparing for our domestic market entry. For customers, the Handbook provides a clear set of rules which suppliers must adhere to and ensures that they are treated in a transparent and fair manner. In this regard, Energia fully supports the objective of the Handbook.

In this response general comments are provided first, followed by sections on the CER decisions and proposals for further consultation, respectively. The final section has some brief conclusions.

2. General Comments

At the outset, Energia notes that the inclusion of decisions in the current paper is somewhat of a surprise, in that the initial consultation and subsequent discussions between suppliers and the CER, did not indicate that certain matters would move straight to decision and it certainly did not indicate that most of the paper would be finalised in this round of consultation. Energia's initial response[1] was submitted under the premise that there would be further opportunity to discuss the content of the Handbook when the changes took shape and became apparent in a marked-up version. As such Energia has included some additional comments in relation to some of the decisions and principles, in addition to comments on specific consultation questions.

Energia acknowledges where CER have amended or removed elements of the initial consultation in response to submissions from respondents. Notwithstanding this, a number of decisions that are included in this paper have not addressed significant concerns raised in our initial response; these remain significant concerns and are not allayed by the reasons forwarded for the respective decisions.

This is particularly true in respect of Energia's concerns over the state of retail competition for residential customers. Energia remains firmly of the view that there is a two-tier market for residential customers in Ireland; an active and competitive market for minority of customers that have engaged with the market and switched supplier, and the majority of customers that have never engaged with the market and remain with the incumbent suppliers (i.e. EI/BGE). Energia considers the appropriate response to this market segmentation, arising from the CER's decisions on market deregulation thresholds, to be a targeted and phased roll-out of proactive measures,

[1] http://www.cer.ie/docs/001028/CER16300%20Energia%20response%20to%20the%20review%20of%20the%20Suppliers's%20Handbook.pdf

informed by research and analysis of possible market failures, to ensure all customers seek to avail of the benefits of competition. Such an approach should be progressed as a priority alongside continued protections for customers already engaged in the competitive segment of the market.

The existence of a two-tiered residential retail market in both gas and electricity gives rise to particular concerns surrounding the likely disproportionate burden that new requirements surrounding market notifications will place on new suppliers and the annual prompt, which is considered to be a blunt and largely ineffective attempt to address the fundamental competition issue presented by the unengaged, legacy customer base of the incumbent suppliers. While in principle Energia are supportive of the objectives of a contract notification, the impact of the 30 day notice will have a disproportionate effect on new suppliers whilst the annual prompt is likely to have negligible impact on the incumbent's legacy customer base. As the 30 day notice message is targeted at an already engaged segment of the market and is likely to increase churn in this active market segment, ultimately dissuading the entry of new entrants into the market.

It should be noted that collectively energy suppliers in ROI spend nearly €20m annually in advertising and marketing to encourage customers to engage and participate in the switching market, This message appears to get through to a small proportion of the market that have switched at some point, unfortunately for the remaining 70% with legacy providers, participation will need to be brought about by structural change rather than further communication. As outlined herein, Energia's concerns in relation to the design and focus of the market prompts have not been assuaged in this paper and we would urge the CER to consider the market implications for the enactment of the proposals as outlined.

Finally, due to the amount of changes proposed in the document the lead in time to implement all proposals will extend beyond the implementation timelines indicated in the paper, and as such we ask that the CER be flexible in the approach to implementation timelines. Furthermore, some assessment of the costs of the decisions taken to date and the proposed changes should be undertaken to appropriately inform the decision-making process.

3. CER Decisions

As outlined above, Energia responded to the earlier consultation under the assumption that there would be an opportunity to comment further in this round of the consultation process. In this context Energia has outlined below a number of points for clarification in relation to the decisions and in some cases a reiteration of concerns raised in the previous consultation that haven't been addressed.

Decision 13

It is unclear from the paper what CER considers to constitute a tariff in this context. It would be helpful for suppliers and customers if CER could provide, here and elsewhere, a list of definitions of key terms relied upon throughout the Handbook.

Decision 15

This decision requires suppliers to display the information outlined in Decision 15 on all marketing and advertising material, apart from TV and Radio. The exemption of TV and radio from this requirement is a welcome decision. However, it is not clear if the decision also refers to digital advertising and social media. By extension of the rationale for excluding TV and radio, Energia consider it appropriate to adopt a similar approach to digital advertising and social media as these mediums rely on a succinct message and are constrained by the amount of information that can be effectively communicated in them. Stipulating that the content in this decision are included in digital ads and in social media may increase costs and will certainly undermine the effectiveness of message and possibly the medium as a means of communicating with current and prospective customers. As is standard practice, reference to additional terms and conditions should be acceptable.

Decision 21

Energia does not consider the relevant system infrastructure and processes exist in the market to enable full compliance with this decision. The decision does not adequately account for the differences between lifestyle prepay suppliers and all other suppliers.

Decision 34

The decision to mandate the provision of cash payment is both costly and cumbersome for a supplier to implement and maintain. It also unnecessarily encroaches on a core commercial decision taken by suppliers in how they engage with customers and a model by which they do so. Suppliers are best placed to react to the demands of their customers, including alternative payment options and there must be recognition that different payment options can give rise to different costs for suppliers and thus may have been avoided by supplier to date, to keep costs to customers at a minimum.

Decision 35

While Energia is supportive of the objective being pursued in this decision, there are a number of instances where validation of a meter read is required before a refund can be issued. Delays in obtaining this validation, which is outside of the control of the supplier, may frustrate efforts to comply with the 2-month deadline. Clarification of the exceptions that will apply in this instance is required.

4. Proposals for Further Consultation

This section outlines some of Energia's high-level concerns with a number of the proposed decisions contained in the paper.

The Estimated Annual Bill (Section 4.1.1)

a) Types of marketing and advertising material subject to the requirement to include the Estimated Annual Bill

Option 1

Energia are strongly opposed to this option. Requiring the supplier to include on all advertisements the Estimated Annual Bill (EAB) is cumbersome and will restrict the supplier's ability to advertise. In addition, it does not make sense that suppliers would be required to include the EAB in instances where an energy product is not being sold (e.g. energy efficiency) or indeed where a supplier is targeting a business customer. Supply companies are now diverse businesses with more than supply element. To tie suppliers to the EAB in all advertisements would not be of benefit to the targeted customer and will come at an increased cost and may undermine the message being delivered communicated to the customer. Furthermore, cross-selling messages may distort competition for other services offered by suppliers, to the detriment of the customer.

Option 2

Energia is supportive of option 2 as the preferred option. This option strikes a balance between presenting the EAB in the appropriate context and not overburdening suppliers or diluting the message being communicated by overloading marketing material. Furthermore, it does not place the onerous requirement on suppliers to include the EAB in non-energy related communications.

Option 3

The elements of option 2 that are repeated here are similarly agreeable. However, concerns arise where the requirement is broadened to apply to non-energy related advertisements. Supply companies are diversified business and as such making this a requirement may impinge on other aspects of the business. Furthermore, mandating that the EAB be included on adverts that do not pertain to any energy offer or indeed may not even be targeted at domestic customers is wasteful, cumbersome and ill conceived.

Q: Respondents are invited to comment on whether the Estimated Annual Bill should be included in all TV and radio advertisements, regardless of the content? Outline reasons for agreement and disagreement.

Similar to the issues raised above, Energia have significant concerns about requiring suppliers to include the EAB on all material regardless of the content or target audience. It would seem counter intuitive to include the EAB in material where it is not relevant to the customer. Such a broad ranging requirement may have unintended consequences as the type of media and customers are not being fully considered. TV, radio, digital advertising and social media rely on brevity to effectively communicate a message. In addition there is a cost associated with the duration of the advert and this should be a factor in CER's considerations as it can impact on customers and have unintended consequences for suppliers; e.g. reduced use of an effective advertising medium.

Furthermore, if the CER's approach to issuing non-engaged customers with annual alerts is to have any effect, it will have to be complemented by substantial levels of advertising to raise customers' awareness.

The standard for advertising in such media is to refer to additional terms and conditions or information. It is crucial from a supplier's perspective that the message being communicated to the customer is not diluted.

b) Method for the calculation of the Estimated Annual Bill

No comment at this time

c) Proposed requirements for the display of the Estimated Annual Bill

Proposal 1

The Estimated Annual Bill should be displayed in the main body of the advertising or marketing material and should not be displayed in footnotes.

Again the proposal here will have the effect of confusing and diluting the message of the advertisement. Marketing messages rely on a succinct message and are further constrained by cost, space and duration. Inclusion of the EAB in the main body will have a negative impact on all of these components. As such, the EAB should be included alongside other terms and conditions associated with the advert/offer.

Proposal 2

The font of the Estimated Annual Bill figure should be no smaller than the second largest font in the main body of the advertising or marketing material.

This requirement is overly prescriptive and the stipulation that it be no smaller than the second largest font would seem to be arbitrary. This approach would limit the supplier in terms of the design and look of an advertisement. Similar to the above point, there are certain constraints for adverts. The inclusion of this requirement will introduce a further limitation.

Proposal 3

Suppliers are required to ensure that the definition of the Estimated Annual Bill is included in the marketing and advertising material. The proposed definition is as follows: ''The Estimated Annual Bill is calculated using the average household's electricity consumption of 5,300kWh (and gas consumption of 13,800 kWh) and is inclusive of all energy related costs, discounts, cash-back and refunds. Discounts relative to (insert supplier's name) standard unit rate''.

This proposal may work with more traditional forms of media such as print but is not compatible with TV, radio and social media. The message is far too long and will detract from the core message on all our communications which is for customers to switch and save money. RTE and Clearcast require that on-screen text appears for certain duration of time, the more words, the longer they need to be on screen to allow them to be read. If this many words were to be added to a TV ad for example, the ad would probably have to be a minute long, thereby making it prohibitively expensive to produce and broadcast. Effective marketing is a finally tuned medium that is ill-suited to longwinded messages. Due to its length, the above text is not compatible with the majority of marketing material and media. Furthermore, based on our experience it is too long to hold the attention of the intended audience.

Proposal 4

Where cash-back offers are displayed in marketing and advertising material, the following text must be displayed immediately underneath and in the same font as the cash-back offer: ''this amount is already included in the Estimated Annual Bill figure''. Alternatively, the following text should be displayed immediately and in the same font as the Estimated Annual Bill: ''this amount includes (insert Euro amount) cash-back offer''.

Energia can see the reasoning for including a reference to cashback in this context. However, as outline above, marketing and advertising material is not conducive to longer messages, in particular, TV, radio, digital advertising and social media. As such we would accept the second wording ''this amount includes (insert Euro amount) cash-back offer'' provided that the font is not required to be too large.

Content of the 30 Days Notice (Section 4.1.2)

In principle, Energia is supportive of the objectives of a contract notification process. However, the introduction of the 30-day notice requirement disproportionately affects newer suppliers, all of whom operate in the competitive tier of the market. Without prioritising different changes, of commensurate effect, and considered to be lacking from the CER's proposed approach, the uncompetitive tier of the market – i.e. changes targeted at the customer base of the incumbent suppliers (EI/BGE) – will be largely unaffected by this proposal. Fixed term offers are predominantly used in the switching market; therefore this customer segment is engaged and should not be the first priority for further customer participation. Specifically, targeting fixed term offers will disproportionately impact new entrants and restrict further competition. This approach disproportionately affects new suppliers and prospective market entrants whilst ignoring the least engaged customers in the sector, those of EI and BGE. The implementation of this would not encourage switching in the market but rather more churn amongst an already active cohort. Implementation of this will be time consuming and costly and may impact the ability of new suppliers to offer competitive rates.

The proposed content of the 30-day notice, which includes three sets of tariffs and charges, three EAB calculations and variances together with prescribed messages is overly complex for customers to understand and costly for suppliers to produce on an individual customer level.

The overly complex nature of the notification could frustrate the realisation of the proposals objective; i.e. customers will find the message/approach too confusing and will remain disengaged. We also do not believe that it appropriate that exact text should be prescribed by CER on supplier notification messages. This should be left to suppliers who are better placed to use text that is consistent with the communication intention albeit aligned with CER's objection of the notification process.

The format of the proposed notification content is extremely complex and costly for suppliers to produce. Suppliers billing systems are not configured to facilitate the production of such complex individual notifications. It is anticipated that this will require the development of new systems. This will be both costly and require significant development time. Our initial estimate will be at least 12 months, which will be outside CER's initial target timeline.

Content of the Annual Prompt (Section 4.1.3)

As referenced above, the concern with this proposal is that it does not go far enough in addressing the issue of the incumbents 'sticky customers'. Suppliers have invested substantial sums of money to try engaging these customers with limited success. This cohort of customers has consistently resisted the message to switch and save money. The annual prompt may be effective as part of a wider range of measures that sought to engage this cohort but will have limited impact on its own. Energia acknowledge the CER's commitment to developing a strategy to encourage further engagement with customers. However, without seeing the detail of this campaign it is difficult to comment at this point. Furthermore, as legacy customers have proven immune to extensive advertising campaign from suppliers it is difficult to see how any marketing campaign alone without structural reform.

Energia consider the issue of the large number of 'sticky customers' in the incumbent suppliers' customer base to be a priority issue and is one which has not been addressed by CER since price deregulation in the respective markets, despite the continued dominant position enjoyed by both incumbent suppliers (EI/BGE) in their respective markets. It is therefore necessary that a targeted and evidence-based approach is adopted by CER is a genuine attempt is to be made to open up the domestic market to competition and remove the current segmentation between competitive and non-competitive split in the market. As the approach adopted herein is likely to remain in place for a number of years, it is necessary for the further development of competition and in the interests of customers, that the appropriate changes are made to address this issue. The proposed annual prompt is a blunt tool and is unlikely to have the desired effect as the requisite analysis has not been undertaken to better inform the policy response to this key issue for the residential energy market.

Furthermore, the proposed annual prompt is in stark contrast to the message that will be communicated via the 30-day notice to an engaged segment of the market. Newer suppliers will have a stronger message going to an engaged and mobile customer base, than that given in the annual prompt to customers that have been largely impervious to such messages to date. The net result will be little or no impact for the incumbents and the possible weakening of the competitive offers that new suppliers are able to offer and an overall lessening of competition.

There are also concerns that if implemented as is that in addition to not causing customers to switch there will be ways for suppliers to circumvent this requirement by changing the status of customers periodically so that no customer has been on a tariff for the required amount of time.

In terms of specific comments on the annual prompt content, please refer to our comments in 4.1.2 which are equally relevant to the annual prompt requirements.

Customers’ ability to Pay (Section 4.2)

Energia engages fully with customers and the customer’s ability to pay is central to our approach to customers in arrears. As well as Energia’s regulatory requirements, our commitments to customers in the Energy Engage Code further underlines our commitment to dealing fairly and reasonably with customers in arrears. However, suppliers must be able to recoup money from customers who consistently engage in energy theft and as such should be differentiated from the general customer base.

While we are supportive of the proposal for engaging customers, we would be keen to understand the CER reasoning further and to know whether there is any evidence that suppliers require this additional guidance. The supported reasoning states ‘suppliers have adopted different practices to assess customers’ ability to pay…’ however we are not confident that this would address this as the proposal is open to interpretation.

Codes of Practice for Non-household Customers (Section 4.3)

Code of Practice on Billing and Disconnection (Section 4.3.3)

Proposed Decision 2

In principle we are in agreement with the proposed decision, however policies in this area should be reasonable with appropriate protection afforded to suppliers. Suppliers should be allowed make deposit requests that are appropriate to the individual circumstances.

Code of Practice on Complaint Handling (Section 4.3.4)

Proposed Decision 3

Energia engages fully, transparently and in a timely fashion with all customers. However, the resolution of an issue can be contingent on customer engagement. As per the current Handbook, the revised Handbook should acknowledge that complaints may take longer to resolve if the customer is not engaging or if technical procedures are required to address an issue. If this requirement were to be implemented then it may also be prudent that suppliers could notify CER of any reasons why implementation has not been processed, within the agreed timeframe. With the timeframe extended accordingly.

5. Conclusions

The proposed changes to the Supplier’s Handbook represent a significant departure from the ethos of the existing document and if implemented as decided/proposed, will likely have a negative impact on the market. Energia considers the main risks to the market to be a dampening of the competitive offerings of suppliers and this, coupled with increased administrative costs from the implementation of the proposals, may dampen competition.

The general approach adopted here in relation to customer engagement in the market ignores legacy customer base of the incumbent suppliers (EI/BGE) who have never switched, in favour of customers who have actually engaged in the market. It cannot be the case that the CER place disproportionate requirements on newer suppliers who, through their commercial offerings, have engaged a large number of customers and given an impetus to competition in the market, whilst largely ignoring the problems of our two-tiered market and the uncompetitive segment represented by the vast majority of EI and BGE's legacy customer based. The annual prompt is a blunt tool and on its own is unlikely to make any significant impact on EI and BGE's sticky customers. This is the first time since price deregulation in the respective markets that CER have sought to address this issue and it is imperative that an evidence-based approach is adopted with the greatest expected impact. Failing this, Energia consider structural remedies may be required.

The two main proposals if implemented will increase churn in the segment of the market that already contains highly engaged customers and will have little or no impact on the segment of customers who have proven to be relatively immune to marketing and savings messages. Seeking greater engagement amongst legacy customers should be the first phase in looking for greater customer engagement in the market, while maintaining protections for all customers in the market. Once this issue has been adequately addressed then the focus could be on assessing the suitability of the customer protect framework for such a market, absent the inherent problems of a two-tier market and a large legacy customer base for incumbent suppliers that remain dominant in their respective markets.

The most significant course of action that the CER could take to engage customers is to look at measures that would complement the annual prompt and help reach EI and BGE's legacy customer base. This cohort makes up the majority of the market and would seem to be the logical first step in terms of seeking to engage customers. Given the resistance of these customers to communications it would seem logical to look at more structural reforms.