



NI Domestic Market Opening – Six month Review

Findings

01 July 2011

Introduction

1. Following domestic market opening in June 2010, the UR committed to performing a six month review of the development of domestic competition in the market. This paper sets out the results of this review. This review was not supplier specific, but as there are currently a small number of players there were some aspects of the review that were only applicable to the active suppliers. The review covered many aspects of the domestic market within the current regulatory framework. All of the policy decisions emanating from this review apply to both electricity and gas.
2. On 11th November the UR published a short summary of our work programme ¹and the first information request was sent out to relevant suppliers. Review of these findings concluded in policy decisions which were taken to our Board in April 2011 for discussion and approval.
3. This paper outlines the outcome of the review and UR policy for both electricity and gas. (Note there were certain areas of the work programme that have not been reported on in this paper as the findings were not significant.)

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http://www.uregni.gov.uk/news/view/updated_work_programme_for_the_six_month_review_of_the_domestic_electricity/

Proposed Licence Modifications and IME3 Consultation

4. It should be noted that there are several proposed licence modifications discussed in this paper which will be formally consulted on as part of the package of licence modifications for IME3 implementation. IME3 calls for a high level of customer protection and the UR view is that the findings of this review are intertwined with that goal. We therefore will consult on any modifications resulting from the findings of this 6 month review as part of the overall IME3 consultation. They will form part of the Consumer Protection section of that consultation paper. Licensees should therefore **not respond** to this findings paper but rather make representations in writing regarding the modifications discussed in this paper when they are consulted on in the IME3 consultation². The IME 3 consultation will also include explanations of the reasons and effects of the modifications and the actual proposed licence drafting changes which this paper does not.

² http://www.uregni.gov.uk/uploads/publications/UR_Implementation_of_IME3_July_11.pdf

Analysis of Findings

Supplier Prepayment functionality

5. As part of the review we assessed compliance with supplier obligations to provide prepayment functionality for domestic customers, including a review of the published Prepayment Codes of Practice.

6. The following issues have arisen from our review of prepayment functionality:
 - a. Switching capacity - currently there is a switching constraint within the current 7,500 customers per month limit, that up to 10% of these (c750 per month) can be keypad customers. This is mainly due to resource constraints and the fact that before actual switching takes place, we are unsure how long a Change of Supplier (CoS) will take (currently unknown at the time of writing). As a result we have discussed this with NIE (T&D) and agreed to review this capacity after a month of keypad switching and also to consider other options on servicing a Keypad CoS (for example increasing the call centre opening hours).
 - b. Currently NIEES have commercial arrangements with a number of vendors to enable customers to top up (Post Office, PayZone and PayPoint) allowing wide access to vendors throughout the Province. However, new suppliers entering the keypad market are not entering into contracts with all three providers straight away, and as a result there is a risk that a customer may sign up with a new supplier without the knowledge that they may not be able to top up at their usual location and topping up elsewhere could potentially prove problematic or involve a degree of travelling. As a result in order to protect customers, we propose that a supplier must inform their customers (before signup) that the customers payment options may change

7. In order to enhance consumer protection with respect to prepayment functionality, we are proposing to modify the supply licence as part of the IME3 consultation to

include a general condition to have a Marketing Code of Practice that will be a document prepared and published from time to time by the Authority relating to marketing activities. This application of the Marketing Code of Practice will be aimed at protecting customers, in particular vulnerable customers, from inappropriate marketing practices and ensuring that they can be informed in an un-pressurised way on whether or not to change their energy supplier. Within this Marketing Code of Practice we propose to include and mandate that a supplier must inform their customers (before signup) that the customer payment options may change.

8. The IME3 modifications will also include a new obligation on suppliers that if they sell to prepayment customers they will have in place resilient vending procedures and arrangements that will ensure that customer can continue to vend in the event of supplier insolvency or market exit for any interim period before the customer is transferred to the SoLR (Supplier of Last Resort). This will ensure that customers are protected in the event that if a supplier should exit the market (whether planned or otherwise) they have in place arrangements which will enable prepayment customers to continue, for at least an interim period, to purchase electricity via their prepayment card.

Tariff differentials

9. The objective of this part of the review was to assess compliance with the applicable licence conditions - essentially to ensure that any differentials between a given suppliers own tariffs for the three different normal payment types (i.e. standard credit, direct debit and prepayment meter) reflect only appropriate cost differentials between those payment types. In addition, to review the tariff differentials within payment methods (for example DD customers who opt for online billing vs postage billing).
10. The requirements to be cost reflective pursuant to the licence proved problematic to assess. Suppliers tend to aggregate up by customer groups defined by their

payment methods, resulting in a high level analysis and application of costs to the different customer groups defined by payment method, and as a result understanding the underlying costs and building blocks of the tariffs was difficult.

11. The requirement of the IME3 Directive is that customers are offered a wide choice of payment methods which do not unduly discriminate between customers and in respect of which the terms and conditions of contracts, including terms as to price, reflect the costs to the supplier of providing the different payment methods. Currently the licence requires suppliers to offer a wide choice of payment methods, and also requires any difference in charges associated with the choice of payment method to be cost reflective. We propose to modify the existing provision to make clear that the cost reflectivity with regard to the differences between payment methods applies not only to terms as to price, but to any difference in or between the supplier's different sets of standard terms and conditions.
12. This modification will be proposed in order to implement the requirements of the Directive. The effect of the modification will be to ensure that any differences in the terms and conditions of contracts which arises because of the payment option chosen by the customer is reflective of the costs to the supplier of providing the relevant payment method.
13. As a result not only will the licence obligations in this area be reinforced with the proposed modification, the UR will also propose to issue guidance on tariff differentials. If a supplier's differentials are outside parameters that the UR deems to be reasonable, the UR would then investigate the supplier's tariffs and their cost reflectivity to ensure licence compliance.

Review of payment terms for non direct debit customers (requirement for security deposit)

14. Currently Airtricity are the only active supplier in the domestic electricity market and currently they charge a security deposit for those customers who will not be paying by direct debit or who are non-homeowners. Whilst it is not unusual for suppliers of domestic customers to require a deposit from certain customer groups, our licence dictates that these charges should be *fair* and we agree that the security deposit is reasonable. On consideration of the amount of a security deposit, the UR regard a reasonable security deposit would be the amount of a 3 month bill for average consumption (therefore a maximum deposit of £150 seems to the UR to be reasonable given current prices). On review of these charges and their application, it is also the UR's view that the deposit should be refunded in full to the customer after 12 months if they have a clean credit history with the supplier for that period.

Customers Terms and Conditions and Review of the licence

15. The objective of this review was to ensure terms and conditions comply with the relevant licence obligations, and to also review the relevant licence obligations in the area of contractual t's and c's.

16. We considered if we would be enhancing customer protection (and within the regulatory remit for implementing IME3) to amend the licence to ensure that all standard t's & c's are submitted to the UR for approval. We refuted this argument as this could turn out to be extremely onerous task due to the increasing number of suppliers and tariffs that may soon be offered. In this regard there will be no modifications to the licence, we will continue to regulate ex post by having the licence requirements in place and investigating any supplier where there is any suspected incidences of non-compliance.

17. Enhanced consumer protection is at the heart of the IME3 Directive. The Directive envisages consumer protection to be achieved not only through the provision of

relevant services and clear, transparent information but also through the contractual relationship and in particular through transparency of contractual terms and conditions. Therefore the UR considers it appropriate and necessary to strengthen some of the existing provisions in order to ensure full compliance with the provisions of the Directive.

18. Therefore the UR proposes to modify the relevant condition (generally Condition 27 in electricity supply licences and Condition 2.18 in gas supply licences) such that it also –

- a. requires that each set of the supplier's terms and conditions is published on its web-site. This modification will meet the requirement that the terms and conditions are well known in advance;
- b. provides that although suppliers can determine different terms and conditions for different cases, classes of cases and areas etc. the supplier may only have one standard tariff for each such set of different terms and conditions for contracts which are to be of an indefinite length (i.e. one standard tariff for evergreen contracts for each different case, area etc);
- c. requires suppliers' terms and conditions to (i) set out the unit rate (expressed in pence per kWh) of the applicable tariff together with any other applicable charge or payments including any standing charge, and (ii) where the tariff is not a standard evergreen tariff to show the comparison between the unit rate of the applicable tariff and of the standard evergreen tariff.

19. Due to the introduction by suppliers of non standard products such as fixed duration products, the UR also proposes to modify the licence to require that where a contract with a domestic customer includes a fixed term period the customer is (a) informed at least 28 days but no longer than 42 days in advance of (i) the expiry date of that fixed term period, and (ii) the details of the standard evergreen tariff to which they will revert following the expiry of the fixed term, and (b) not given another fixed term period unless they can terminate during that period without payment of a termination fee and are clearly informed as such in advance. This prohibits terms to

a customer that includes a rollover from one fixed duration product to another product (that is a product that has a further lock in). Customers would be allowed to rollover onto a standard evergreen product unless they explicitly agreed otherwise.

20. Currently there appears to be some industry misunderstanding as to what constitutes a deemed contract as provided for in the statutory provisions. It is also the case that no electricity supplier has yet made a deemed contract scheme. The UR will therefore work with electricity suppliers to discuss and understand the basis of any potential misunderstanding. The UR also proposes to modify Condition 28 of electricity supply licences which relates to deemed contracts so that it:

- a. reiterates the requirement for suppliers to make and publish deemed contract schemes; and
- b. requires suppliers to take reasonable steps to enter into a Contract with the customer as soon as practicable.

21. Currently the gas and electricity licences include (via Condition 2.18 and Condition 27 respectively) an obligation for suppliers to give domestic customers at least 21 days advance notice of any proposed variation and where a variation which relates to price takes effect to give notice of it having taken effect within 28 days of the effective date. They also require that contracts with domestic customers include a right for the customer to terminate the contract where the supplier proposes a variation and the customer does not wish to accept the variation. Whilst the licences are already substantially compliant, in order to fully implement the Directive, the UR proposes to modify the current conditions. The requirements will continue to apply only in relation to contracts with domestic customers but will be amended as follows

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- a. The notification to the customer has to be by way of an individual written notice, which is transparent and comprehensible;
- b. The supplier has to give advance notice of any variation to the terms of the contract, including for the avoidance of doubt variations to price terms, at least 28 days in advance (extended from the current 21 days); and

- c. A subsequent notice of the date a price variation actually takes effect is no longer required.

22. The effect of the proposed modifications is that all domestic customers will receive at least 28 days advance notice in writing to them of any variation to the terms, including terms as to price, the supplier wishes to make to the contract. On receipt of this notice the customer can decide to terminate the contract but if he/she does not so terminate then the variation can take effect from the date specified in the notice. The supplier is required to ensure that the notice can be easily understood by the customer, that it sets out the variation in clear and concise terms, sets out the date the variation will take effect (which cannot be less than 28 days from the date it is sent) and clearly informs the customer that if he/she does not wish to accept the variation he/she has the right to terminate the contract and how that right can be exercised.

Marketing & Customer acquisition programme

23. The UR is not in a position to police marketing law and is not expected to. The objective of this part of the review was to review the marketing and customer acquisition programmes of active suppliers to ensure they are compliant with the licence. As discussed above (in paragraph 6) there will be a licence modification and a future project for a new marketing Code of Practice that will apply to all suppliers. The code will be a document prepared and published from time to time by the Authority. The UR will require suppliers to report to the UR on an annual basis under this code.

Review of Bill layout

24. During this review we made changes to an individual supplier's bill format in order to improve the transparency for their customers, and to ensure that they could clearly see on their bills the unit cost they were paying for their energy. There were no

other significant findings in this area or further proposed changes, however we may choose to review bill layout going forward (this may also include annual statements.)

Resolution of market issues to date

25. The market issues to date included difficulties in switching for over 65's and invalidated meter reads for customers who have had an actual scheduled read carried out by NIE networks after a customer read. This has seen the network read invalidate the Change of Supplier (CoS) read taken from the customer and used by the supplier as the CoS read. These were resolved mid November and we continue to assess the status and effectiveness of the solution.

26. There was also an issue with the number of rejected meter reads which is currently being reviewed for resolution.

Switching capacity apportionment

27. We are currently assessing the appropriateness of the current switching capacity (currently 7,500 per month/ 375 switches per day). We have already sought thoughts and suggestions from suppliers on a solution to apportion the available daily capacity among the active suppliers. We have scheduled a workshop with suppliers (and NIE(T&D)) at the end of June for the discussion of these and with the aim of establishing a suitable methodology for use going forward before the completion of the enduring solution project.

Any other issues / Stage 2

28. Reviewing the emerging competition and features of the market is an ongoing aspect of the remit of the UR. We intend to review other areas of the retail market and will publish a work programme for this second stage in due course.