



The Consumer Council

Consultation: *Competition Commission Provisional Determination on the NIE Price Control referral*

Date: *29 November 2013*

Contact: *Marian Cree*

Our (PID) reference number: *PD20010 1365*

The Consumer Council is an independent consumer organisation, working to bring about change to benefit Northern Ireland (NI) consumers. Our aim is to make the consumer voice heard and make it count.

The Consumer Council welcomes the Provisional Determination (PD) by the Competition Commission. Overall it represents a very positive outcome for NI consumers. The cost of electricity is the highest priority to NI consumers and the Competition Commission has substantially driven down the cost from NIE's original proposals. The £5 a year increase on the total electricity bill in real terms for domestic customers that the Competition Commission's PD envisages, compares favourably with the £21 a year increase in real terms that the original NIE proposals envisaged.

The second priority for consumers is the reliability and safety of the system. This is only a secondary priority because under normal operating conditions the NIE network has proved to be reliable and safe and therefore to a degree taken for granted by consumers. Any suggestion that the network may not be reliable or safe will be of great concern to consumers. Throughout this Price Control process the Consumers Council has emphasised to NIE, the Regulator and the Competition Commission the need to strike the right balance between the cost of investment and the robustness of the network. Having made this point and having emphasised the need for consumers to have confidence in the outcome of the Price Control and having noted that the Competition Commission has used an expert engineering consultant (BPI) to advise on its asset investment, we trust the expertise of the Competition Commission in reaching its determinations on this issue.

There are a number of areas in the PD that we wish to highlight for comment.

We note that the Competition Commission is proposing further licence conditions "to improve the recording, monitoring and verification of information... (as) the continuation of the existing licence conditions will operate against the public interest". In the view of Competition Commissions this will allow 'the more effective involvement of other stakeholders who would

benefit from transparency (and) will help improve regulatory decisions and controls". As one of those stakeholders, the Consumer Council welcomes this determination and we look forward to representing consumers in future Price Controls.

At the recent workshop held by the Regulator on the Competition Commission's PD, the Regulator's Director of Electricity stated that NIE have achieved PAS55 accreditation for its asset management system. Whilst we welcome this development it is disappointing that reaching this recognised accredited industry standard has taken NIE so long to achieve.

This issue was raised with the Regulator at the outset of the RP5 process. The need for the Regulator to instruct NIE to achieve an industry accredited standard was stressed consistently by CCNI throughout the RP5 process as it was in RP4. Unfortunately the Regulator felt that encouraging NIE to move towards an industry standard asset management accreditation was sufficient. However, the distinct lack of asset management evidence in the NIE RP5 submission to the Regulator showed that encouragement had not delivered the desired result. CCNI would strongly suggest that the Competition Commission revisits this issue with a view to making recommendations on asset management within the Regulatory process.

We welcome the proposal of 50:50 sharing between the consumers and the companies' shareholders for non pass through costs. This lays down a principle that risk sharing between consumers and shareholders should be equitable.

We welcome the proposal to prevent double funding of network investment, as we saw in the Phoenix Natural Gas how this can increase costs for consumers with no benefit to them.

We note that the Competition Commission concludes that the cause of the re-designation of opex to capex by NIE was driven by a flawed incentive system under RP4 that encouraged this practice and that this may have led to NIE

receiving inappropriate allowances. In the light of statements in the PD such as:

“consumers, as a result, had paid or would pay in future through higher prices for electricity to some degree than they otherwise would have had this reclassification effect not occurred” (15.64); and,

“in the NIE case there has been some element of double funding” (15.68),

We are extremely disappointed that the Competition Commission has concluded that it cannot quantify and return to consumers money that belongs to them and not to NIE shareholders. Whilst we accept the Competition Commission’s assertion that it “could not obtain a robust estimate of the adverse effect” the fact remains that a benefit is being accrued by NIE and a loss taken by consumers. It is unreasonable to ask consumers to accept that the possibility remains that they have, and still could, pay twice for their electricity services. We do not believe that this state of affairs is in the public interest and we ask the Competition Commission to reconsider this matter.

Furthermore, consumers in Northern Ireland require assurances that this unacceptable practice will not re-occur in future price controls. CCNI would ask the Competition Commission to recommend improvements to the current regulatory model so that such ‘double funding’ cannot take place in the future.

We welcome the review by the Competition Commission of NIE’s network investment programme. The three major projects it has removed represent substantial savings for consumers.

We welcome that the Competition Commission has removed way leaves and rates as a pass through cost as we argued at the outset of the Price Control process that these were items that NIE was able to exert some control over.

We welcome the Competition Commission’s decision to adjust the Rate of Return that NIE can earn to 4.1 per cent from the Regulators’ proposed 4.5

per cent. We believe that this is in fact remains generous as comparables with GB would put this figure at the higher end of the current spectrum.

We welcome the Competition Commission's examination of the issues around pensions. We recognise this is a complex matter and appreciate the efforts the Competition Commission has made to explain and clarify the matter.

Our previously stated view is that consumers should not be expected to bear all the risk and hence costs associated with a pension deficit. Within the risk sharing principle of incentive based Price Control (which the Competition Commission is advocating), shareholders should also bear the burden of reducing the deficit. By splitting the deficit into historic and incremental deficits and making consumers 100 per cent responsible for the former and shareholders 100 per cent responsible for the latter, the Competition Commission has adopted this principle. However, we would ask the Competition Commission to clarify if the costs across the historic and incremental deficits are broadly equal to demonstrate that the consumer is not bearing the greater burden.

However, we believe that the Competition Commission may have underestimated the degree of control that NIE had and still has over its pension funds. The PD states "that NIE currently has a fairly limited ability to influence the historic scheme deficit". However, the Competition Commission does not quantify what it means by "limited ability" and most importantly does not appear to recognise the ability NIE had to influence the original accumulation of the historical deficit. We believe that NIE made decisions or failed to take preventative action during the build of the deficit that exacerbated the problem despite the fact that it's trustees were under a legal obligation to manage the funds prudently. We believe the Competition Commission should reconsider its decision to make consumers 100 per cent responsible for the historical deficit.

The allowance for what was Regulators Fund 3, (Renewables and the Tyrone Cavan Interconnector), is not included in this PD. The Regulators' Director of

Electricity stated at the aforementioned workshop that the Competition Commission will make a separate determination on this and a preliminary figure for this 'fund' is £150m.

The delivery of projects contained in this fund are needed urgently. The Tyrone to Cavan Interconnector is required to ease constraint costs and facilitate renewable electricity transmission, whilst upgrading of the network particularly in the west of NI and connecting new renewable projects will help NI achieve its target of having 40 per cent electricity from renewable sources by 2020. The cost allocated to this fund is equally important as it is consumers who will pay for these projects in their bills, not least the estimated £25m per annum that they will have to bear should the interconnector not go ahead as planned.

We therefore urge the Competition Commission to conclude its determination on 'renewables' as quickly as possible. At the same time the Competition Commission should provide transparency on costs and outcomes that will provide clarity and inform the ongoing debate on this matter amongst consumers and all stakeholders.



The Consumer Council

Making the consumer voice heard and making it count

Elizabeth House
116 Holywood Road
Belfast
BT4 1NY

Telephone: 0800 121 6022
Textphone: 028 9067 2488
Fax: 028 9065 7701
E-mail: info@consumercouncil.org.uk
Website: www.consumercouncil.org.uk