

IRISH CONGRESS OF TRADE UNIONS

Response to consultative paper on Legalisation for a Single Electricity Market for the Island of Ireland

1. As an organisation representing 213,000 employees in Northern Ireland through its affiliated unions, Congress welcomes the opportunity to comment on the consultation paper issued by the Department of Enterprise, Trade and Investment on the Single Electricity Market (SEM). Congress has long taken an interest in energy matters for two reasons. First the security of supply and the cost of energy are vital to the economic performance of Northern Ireland and therefore to the jobs of our members. Secondly as consumers of energy our members have repeatedly expressed their concerns about the effect of the cost of energy on their standards of living.
2. Congress regards co-operation on energy matters between Northern Ireland (NI) and the Republic of Ireland (ROI) as being of mutual benefit to the people on both parts of the island. The potential benefits are indicated by the independent analysis of the costs and benefits of the SEM reported in annex C to the consultative paper.
3. Because it aligns with Congress policy we endorse the aims for the SEM as set out in paragraph 2.1 of annex C, but Congress has doubts about whether those aims can be realised by the proposals in the consultative paper. In particular Congress has reservations on the regulatory framework for the SEM. Consequently we are also concerned that the legislative framework underpinning it may not be fit for purpose. The Congress position is explained in the rest of this response.
4. Congress agrees with the move to a single all-island wholesale trading arrangement. We also support the conclusion that this move needs to be underpinned by common legislative powers and duties in NI and ROI.
5. Congress acknowledges that the All-island Energy Market Development Framework published in 2004 was set in the context of the liberalised EU-wide internal market for electricity and gas. However Congress is not convinced that the model for regulating EU-wide markets can be effective for the electricity market for the island of Ireland. Even though the combined market of NI and ROI is more viable, it “is still a small electricity market in the EU context” (paragraph 2.15 of annex C). Solely for this reason the proposed model is not acceptable, but further reasons are advanced later in this response calling the model proposed into question.
6. In 2004 it was stated that competition was a key element of the *primary* objective of both governments’ strategic framework (our emphasis). This puts the cart before the horse, because paragraph 2.14 of annex C correctly identifies the protection of the interests of consumers as the *principal* objective (our emphasis). Therefore Congress welcomes the proposal to enshrine this objective in article 8 of the Draft Electricity Order.

7. This inconsistency within the consultative paper is further illustrated when paragraph 2.14 of annex C asserts that consumer protection is served “*whenever appropriate* by promoting *effective* competition” (our emphasis). In other words competition does not necessarily lead to consumer protection in all circumstances. In the circumstances of the energy markets on the island of Ireland, Congress has grave reservations that competition will resolve the problems highlighted in the consultative paper.
8. In the preceding paragraph we drew attention to the phrase “effective competition”. Congress considers that it will be difficult to promote effective competition. According to paragraph 2.15 of annex C the SEM is expected to “improve competition”. *Improving* competition could be significantly different from *effective* competition. Moreover Congress questions whether the SEM, of itself, will bring into play “new market participants” and even if it does that these new participants will necessarily be of benefit to consumers and the wider economy. There are too many uncertainties to support the definitive claims in the consultative paper.
9. Paragraph 6.2 of annex C puts the argument about competition in a different way. It says, “the promotion of effective and *sustainable* competition is one of the key waysto protect consumers” (our emphasis). The rest of this paragraph focuses on the effectiveness of competition and suggests “a lighter regulatory touch”. However the need for *sustainable* competition might point to a different regulatory approach.
10. One of the other points advanced in paragraph 2.15 of annex C is that the SEM is expected to “improve investment opportunities”. Yet later on in paragraph 6.9 of the same annex it is admitted “new entrants may not make the investment opportunities needed to secure supplies”. This reinforces the concern of Congress about the model for the SEM advocated in the consultative paper.
11. As Congress is not convinced that the current design of the SEM and its accompanying regulatory framework will lead automatically to increased competition, we have doubts that all the elements of the “further qualitative and strategic benefits” will be realised. In particular we have a question mark over the £20m to £25m that it is estimated will be derived from increased competition (paragraph 4.9.2 of annex C).
12. Even though the consultative paper insists that “success depends on effective competition”, it concedes that “dominance may expose NI consumers to anti-competitive bidding and prices over competitive levels” (paragraph 6.9 of annex C). Later on in paragraph 6.12 it is admitted that the SEM proposal will not, of itself, address the issue of dominance. Indeed the trend towards more globalisation may lead to more intense domination.
13. In the interests of economy this issue of dominance must be addressed. An essential element in addressing it is to design a regulatory model that could

cope with the likely scenario of dominance. The current proposals fail this test.

14. Paragraph 6.10 of annex C raises the possibility of a structured resolution being necessary to deal with the issue of dominance. This may form part of the resolution, but regulation may have a greater role to play because structural developments in those parts of the electricity industry in the private sector are beyond the reach of governments. The recent take-over of Viridian by a company based in Bahrain is a case in point
15. It is claimed in paragraph 7.1 of annex C that “enlarging the wholesale market will improve the prospects of smaller companies to participate in the new market”. In a market, which is dominated by a few players, this assertion may not necessarily prove to be the case.
16. Because of the issue of dominance, Congress also queries the assertion in paragraph 8.1 of annex C that the SEM model being proposed “will facilitate the growing involvement of renewable electricity generating companies”.
17. At the end of annex C it is stated that to “avoid the danger of perennial dominance structural change may be necessary” and develops this proposition by suggesting that “a policy lead from both governments” may be required (paragraph 13.6). **In the view of Congress both governments as a matter of urgency should enter into consultation on how to tackle the dominance issue. Only when a degree of consensus is reached on this issue can there be a return to designing the SEM model, which fits with the policy on the dominance issue and the regulatory and legislative framework needed to underpin it.**
18. While it is understandable that the consultative paper concentrates on electricity, there should be some indication of how the proposals fit in with the broader energy market on the island. Admittedly there are some references to renewable energy, but the SEM needs to fit in with government policies on the desirable energy mix. In particular the regulatory arrangements should facilitate this policy aim.
19. If despite the call from Congress for the radical rethink outlined in paragraph 17 above the governments persist with the current proposals, Congress asks that due account is taken of its views on the Draft Electricity Order. Our views are set out in paragraphs 20 to 24 below.
20. Congress questions the wisdom of limiting to 24 months the power under article 3 to modify licence conditions.
21. The lists in article 5(5) of matters that would not be within the remit of the SEM Committee may unjustifiably constrain the general powers of the Committee under article 5(3). Congress therefore calls for clarification that if a conflict were to arise between articles 5(3) and 5(5) that the former would take precedence.

22. The composition of the SEM Committee set out in schedule 1 is not acceptable to Congress. Our view is that the majority of members of the SEM Committee should be independent in that:
 - a) They are not members or employees of the NI Authority for Utility Regulation (NIUAR) or the Commission for Energy Regulation.
 - b) They do not have any interests in any energy business.
 - c) They are representative of the broad range of economic and consumer interests.
23. Of particular concern to Congress is the proposal that 3 of the 7 seats on the SEM Committee would go to members or employees of NIUAR, because the members and senior staff of this body do not reflect the diversity of consumer and economic interests. Consequently this arrangement fails to meet the test of the principal objective that consumer interests should be protected.
24. Finally as indicated in paragraph 6 above Congress supports strongly the proposals in article 8 on the principal objective and duties of the Department and the SEM Committee.