

# Consultation on Electricity North West Limited's Competition Notice

## Consultation

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### Overview:

This consultation seeks respondents' views on the Competition Notice submitted by Electricity North West Limited (ENWL) on 22 July 2011.

Ofgem currently protects the interests of consumers by regulating the margin that Distribution Network Operators (DNOs) can earn from their connections business. ENWL's Competition Notice is their application to have regulation lifted in certain segments of the connection market where they consider competition can be relied upon to protect consumers' interests. The Authority is required to make a determination on ENWL's Competition Notice by 21 November 2011.

We may lift price regulation of connection services where a DNO can demonstrate that it has satisfied both a Legal Requirements Test and a Competition Test.

In this document we highlight the information we are looking for from respondents to help us assess ENWL's application.

A copy of ENWL's application is available on the Ofgem website as an associated document to this consultation.

## Context

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The Authority's principal objective is to protect the interests of existing and future consumers. We consider that, where competition is viable, it can protect customer interests better than regulation. Effective competition in the connections market should allow customers to benefit from lower prices, innovation (for example providing multi-utility connection services) and better service standards (for example faster connection installations).

In recent years we have worked closely with the industry and new entrant connection providers to remove legislative barriers and other limitations on the scope for competition in connections. Despite these efforts we have generally been disappointed with the pace at which competition in electricity connections has developed. To address this we introduced a package of measures in 2010 to remove regulatory barriers to competition and to provide strong incentives on DNOs to facilitate competition. These measures include:

- Providing headroom to new entrants by setting a regulated margin that DNOs can charge on contestable connection services, in market segments where we consider competition to be viable.
- Providing DNOs with the opportunity to have this price control lifted in segments of the market where they can demonstrate that competition can be relied upon to protect consumer interests.
- An assurance that we will continue to monitor competition in the connections market and that any DNO that fails to demonstrate competition by December 2013 will be reviewed by Ofgem and may subsequently be referred to the Competition Commission.

ENWL is the first DNO to request that price regulation be lifted. It has done this by submitting a Competition Notice which we are required to respond to by 21 November 2011.

## Associated documents

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Electricity North West Limited's Competition Notice

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=303&refer=Networks/Connectns/CompinConn>

DPCR5 Final Proposals - Incentives and Obligations

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=348&refer=Networks/ElecDist/PriceCtrls/DPCR5>

Electricity North West Limited – Special Conditions 31/03/2010 (Contains CRC 12)

<http://epr.ofgem.gov.uk/index.php?pk=folder575248>

Connections Industry Review

<http://www.ofgem.gov.uk/Networks/Connectns/ConnIndRev/Pages/ConnIndRev.aspx>

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## Executive Summary

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### Background

We have been working to facilitate competition in electricity connections since 2000. Unlike the replacement, reinforcement and maintenance of the existing network, connection services are contestable. New entrants can compete with DNOs to give customers a real choice over their connections provider and an opportunity to shop around to get a good service and value for money. We expect this competition to deliver benefits that are difficult to achieve through regulation, such as innovation in the type of services on offer and a focus from providers on meeting customer needs. In general, however, we have been disappointed with the pace at which competition has developed. In 2009-10, 87 per cent of metered electricity connections across all DNO areas were completed by the local DNO, compared to 41 per cent in the gas connections market.

For this reason, we revised the regulatory arrangements to further facilitate competition at the last electricity distribution price control review (DPCR5). Previously DNOs were prevented from earning a margin on connection activities. DNOs now earn a margin of four per cent on contestable connection services in those market segments where competition is considered viable. This is intended to create headroom to allow new entrants to compete against the DNO.

Also since the start of DPCR5 (April 2010), DNOs have been able to submit a Competition Notice to request that price regulation be lifted in market segments where they can show that effective competition exists. As DNOs have an important role to play in removing barriers to entry, any DNO that fails to demonstrate effective competition by December 2013 will be reviewed by Ofgem and could subsequently be referred to the Competition Commission.

Electricity North West Limited (ENWL) is the first DNO to submit a Competition Notice application. It is applying for price regulation to be lifted in all of the market segments which are currently considered to be contestable. The Authority has four months from the date of ENWL's application to determine whether to lift price regulation in each of the Relevant Market Segments (RMSs) for which ENWL has applied.

### Considerations in determining whether to lift price regulation

In determining whether to lift regulation on margins we will be considering whether we can rely on actual competition or the threat of competition, rather than price regulation, to protect consumer interests. We will only lift regulation where we determine that effective competition exists. We will conduct a separate analysis of each market segment in ENWL's application.

One important indicator of whether competition is effective is ENWL's market share and the number of alternative providers present in the market. ENWL's application suggests that in some segments it retains as much as 100 per cent of the market, whereas in others it retains only 24 per cent. Overall in 2010-11, ENWL assert that 21 Independent Connection Providers (ICPs) were active in its area.

While we will take into account market share in assessing whether effective competition exists, we do not think that it should be considered in isolation as it can be an imperfect indicator of the effectiveness of competition. For example, a DNO may retain a high market share by providing a competitive price or a high quality of service. In that case, the threat from competitors may be effective in limiting the prices the DNO charges and/or encouraging it to innovate and improve service levels.

Equally, continued regulation in contestable services can have unintended consequences and stifle the scope for customers to benefit from the dynamic benefits, such as innovation, that competition can bring. For this reason, an approach that looks narrowly at market shares, and retains price regulation until pre-defined thresholds have been met, may not be in customers' best interests. Where we lift price regulation, we will continue to monitor the way the market works and customers will continue to be protected by competition law.

## **Respondents' views**

For the reasons outlined above, in assessing whether effective competition exists we will consider a range of criteria. The Authority will make its decision having considered in the round, the evidence in ENWL's Competition Notice and evidence and views of stakeholders.

We would like to hear from local authorities, property developers and other customers (or their representatives) who purchase contestable connection services in ENWL's area. From these customers we would like to understand whether they have effective choice between connections providers, whether they have the information they need to decide between alternative offerings and whether this has been, or is likely to be successful in delivering improved service levels or more competitive prices (either from ENWL or their competitors) in ENWL's area.

We also seek the views of those companies currently competing with ENWL or who have done so, or considered doing so, in the past. From these companies we would like to understand whether there are barriers to them entering these contestable market segments or from growing their market share. In particular, we would like to understand whether ENWL responds appropriately to the needs of its competitors when it provides them with non-contestable services.

From these and other stakeholders, we invite comments on the evidence which ENWL has submitted in its Competition Notice application. We would like to hear whether overall you think we can have confidence in ENWL to operate appropriately if price regulation is lifted.

Wherever possible we would like respondents to provide us with evidence, as well as their views on the issues we highlight. We also encourage respondents to provide us with information to make an assessment of each market segment, as explained in chapter 2.

Responses to this consultation are due by 7 October 2011. We will publish our decision on ENWL's application by 21 November 2011.

# 1. Background

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## Chapter Summary

This chapter provides some background to Ofgem's decision to introduce regulated margins and the potential for DNOs to have price regulation lifted where they meet both a Legal Requirements Test and a Competition Test.

## Competition in Connections

### Overview of competition in connections

- 1.1. Many of the activities of electricity network companies have the characteristics of a natural monopoly and are regulated by Ofgem. Some network activities are not natural monopolies such as the construction of new assets required to extend the network or connect to the existing network. Independent Connections Providers (ICPs) compete with network operators to construct connections (including constructing any network extension required for new developments), but only licensed companies can own and operate the assets once they have been installed.
- 1.2. Where effective competition is possible, it is generally a much better way to protect consumers' interests than regulation. This is because it provides customers with choice and competition between service providers is likely to be more effective than regulation at promoting lower prices, innovation and better services standards. We have sought to promote competition in both the installation of connections to gas and electricity distribution networks, and in the subsequent ownership and operation of those assets.

### Role of the host distributor in supporting competition

- 1.3. Each DNO sets out in its charging methodology the scope of connection services that ICPs are permitted to compete with the incumbent to provide. Activities that ICPs can carry out are described as 'contestable' and those that can only be carried out by the host distributor (DNO) are referred to as 'non-contestable'. Some services may be considered non-contestable by the DNO due to technical or safety reasons. Other services may be considered non-contestable where current legislative or regulatory arrangements make it difficult for competition to develop.
- 1.4. Current examples of contestable works include construction of assets and jointing of dead cables. Examples of non-contestable works include determination of Point of Connection (POC) and design approval. Ofgem is currently working with industry to extend contestability. Further details can be found at Chapter 4 of this document.
- 1.5. Since ICPs rely on the DNO to provide non-contestable services it is important for competition in connections that the incumbent does not abuse its position

as the monopoly provider of these services. The Competition Act and the Electricity Distribution Licence include measures to prohibit the incumbents from discriminating unduly against competitors in the provision of non-contestable services.

### **Growth of competition in connections**

- 1.6. Since the introduction of competition<sup>1</sup> we have seen competition grow rapidly in gas connections, to the extent that more than half of all connections are now installed by new entrants. Competition in the electricity connections market has developed much less rapidly.
- 1.7. In the metered electricity connections market (across all DNOs), market penetration by new entrants<sup>2</sup> stood at only 13 per cent in 2009-10. Although this was a marginal increase in new entrants' market share since 2008-09, the overall level remained low and the rate of growth remained slow. In the unmetered market (across all DNOs), market penetration by new entrants rose to nine per cent in 2009-10, compared to less than two per cent in 2008-09.

### **DPCR 5 Final Proposals – Introduction of regulated margins and the potential for Ofgem to lift price regulation**

- 1.8. The 2008-09 and 2009-10 Connections Industry Reviews highlighted concerns about the development of competition in the electricity connections market. We set out to address these concerns as part of the last price control review (DPCR5), which came into effect in April 2010, by introducing a new approach to facilitating competition in connections to electricity distribution networks. Developments were inserted into the Electricity Distribution Licences of the various DNOs as Charge Restriction Condition 12 (CRC 12).<sup>3</sup>
- 1.9. We recognised that there are some market segments where competition may not currently be viable, for example the provision of one-off Low Voltage (LV) connections. These market segments are described as Excluded Market Segments for the purposes of CRC12 and they are set out at Appendix 3 of this document. One factor that may make jobs in these market segments unattractive to ICPs is their general low value. In these market segments where competition is not currently considered viable, DNOs are not allowed to earn a margin on any of the connections services they provide.

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<sup>1</sup> Competition was introduced in gas connections in 1998 and electricity connections in 2000.

<sup>2</sup> ICPs and Independent Distribution Network Operators (IDNOs).

<sup>3</sup> Charge Restriction Condition 12 - <http://epr.ofgem.gov.uk/index.php?pk=folder575248>

- 1.10. The arrangements introduced at DPCR5 have however enabled DNOs to earn a regulated margin (set at four per cent) above cost<sup>4</sup> on contestable connection services in those Market Segments where competition is considered viable. These market segments are described as Relevant Market Segments (RMS) in CRC12 and are set out at Appendix 3 of this document. They include metered demand and generation connections at all voltages but exclude certain metered demand connections (one off industrial and commercial work at low voltage and domestic LV work relating to no more than four domestic premises) where competition is not considered currently viable. They also include unmetered connections activities. The purpose of the regulated margin is to create headroom to encourage new entrants and to remove the stifling impact on competition that may have existed when the DNOs were not allowed to earn a margin over their costs on contestable services.
- 1.11. In addition to this regulated margin, we also made provision for DNOs to apply to have margin regulation lifted in market segments where competition can be relied upon to protect customer interests.
- 1.12. The Competition Test is designed to enable DNOs to demonstrate that effective competition exists in each RMS. The key overall consideration in our assessment is whether competition can be relied upon to protect the interests of customers. By this we mean that competition will deliver good levels of service and innovation in the connections market at prices which represent value for customers. We would expect that service, innovation and value should reflect customers experience in similar competitive markets such as the provision of other utility services/infrastructure. Further, we would expect that competition would deliver improvements in these areas over time, again to an extent that should be comparable with similar industries. For effective competition to exist, customers must have a real choice between alternative connections providers and/or, if the existing market participants do not deliver, there must be a credible threat of new providers entering the market.
- 1.13. If customers are to be able to choose between alternative connections providers, ENWL, as the owner of the local distribution network, and provider of non-competitive connections services,<sup>5</sup> in their area has an important role to play. If actual and potential alternative providers are going to be able to put genuine competitive pressure on ENWL then they will need to be able to receive timely and reliable non-contestable connections services. Further, for competition to work effectively the alternative providers must not be significantly disadvantaged in comparison to ENWL's own connection business. In considering whether an alternative provider is at a disadvantage to ENWL, we note that it is irrelevant whether any disadvantage is due to the actions of

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<sup>4</sup> Previously under DNO approved connection charging methodologies their connection charge were limited to recovery of reasonable costs.

<sup>5</sup> Some aspects of the connection activity are deemed non-contestable and a can (currently) only be provided by the owner of the distribution network to which a connection is being made.



ENWL or an inherent feature of the connections market (for example, limited access to ENWLs network for safety reasons).

- 1.14. To further encourage DNOs to facilitate competition we also set out that any DNO that failed to demonstrate competition, by December 2013, would be reviewed by Ofgem and could subsequently be referred to the Competition Commission.
- 1.15. In DPCR5 Final Proposals we set out the information that DNOs should provide in making their evidence case. These issues form the structure of ENWL's Competition Notice, they are:
- actual and potential competition - the current level of competition the DNO faces in each market segment and the scope for this competition to grow
  - price and transparency of pricing to customers - the steps the DNO takes to ensure that customers have the information they need to make decisions between taking a service from the DNO or a new entrant provider, and what they are doing to ensure they do not discriminate between their own customers and new entrant providers when they price their services.
  - promoting awareness of competitive alternatives amongst connections customers - the steps the DNO takes to ensure that customers are aware that they can go to other providers for the service they are requesting
  - competition in connections procedures and processes - the actions the DNO has taken to ensure that the procedures and processes they have in place for non-contestable services meet the needs of new entrants and are provided in a non-discriminatory manner
  - efforts to open up non-contestable activities to competition – what action the DNO has taken to extend contestability, and
  - barriers to competition - other actions the DNO is taking to remove barriers to new entrants competing in their area.

## ENWL's Competition Notice

- 1.16. On 6 June 2011 ENWL became the first DNO to submit a Competition Notice to Ofgem. Following discussions with Ofgem, that Competition Notice was withdrawn and an identical notice resubmitted on 22 July. The original submission and the overall timetable would have required us to consult over the summer holiday period for only four weeks. The new submission allows us to extend our consultation period to eight weeks.<sup>6</sup>

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<sup>6</sup> Letter notifying stakeholders of the withdrawal of ENWL's Competition Notice:  
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=302&refer=Networks/Connectns/CompinConn>

- 1.17. The notice submitted by ENWL on 22 July is available on the Ofgem website.<sup>7</sup>
- 1.18. ENWL's Competition Notice is an application to have price regulation lifted in each of the Relevant Market Segments (RMS).
- 1.19. The process the Authority is required to follow in assessing a Competition Notice submitted by a DNO is set out in CRC 12 and DPCR5 Final Proposals.
- 1.20. CRC 12 sets out a Legal Requirements Test and a Competition Test.<sup>8</sup> When the Authority receives a Competition Notice it must determine whether the Legal Requirements Test and the Competition Test have been met for each RMS. The Authority must make this determination within four months of receiving the Competition Notice. CRC 12 also places an obligation on us to consult with parties that we believe have an interest.
- 1.21. Since ENWL submitted its Competition Notice on 22 July 2011, the Authority is required to make its determinations by 21 November 2011.

## Consultation responses

- 1.22. In making its determinations the Authority will, amongst other relevant information, consider responses to this consultation.
- 1.23. Given that the Authority is required to make a determination for each RMS separately, we ask any respondents to this consultation to draft their responses in such a way that they clearly set out which market segment(s) each section of their response relates to. We also ask, wherever possible that respondents provide evidence to verify their claims.
- 1.24. Unless consultation responses are marked confidential they may be posted on the Ofgem website. Please note that it could prove difficult for us to use confidential information as evidence in coming to a determination. If you consider your response to be confidential, in whole or in part, please contact us using the details on the front of this document.
- 1.25. The deadline by which consultation responses must be submitted to Ofgem is 7 October 2011.
- 1.26. The Authority aims to publish its decision on the ENWL Competition Notice with details of its determination in respect of each of the RMSs before 21 November 2011.

## Structure of this document

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<sup>7</sup> Competition Notice submitted by ENWL on 22 July 2011:

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=303&refer=Networks/Connectns/CompinConn>

<sup>8</sup> The Legal Requirements Test and the Competition Test are set out at Appendix 2 to this document.

- 1.27. This chapter provides an overview of the electricity connections market and our decision to introduce a regulated margin (and potential for price regulation to be lifted). It also discusses what the Authority will consider in determining whether the Competition Test has been passed.
- 1.28. Whilst interested parties are invited to respond to all of the questions posed in this consultation, we would particularly like to direct:
- customers to consider the issues discussed in Chapter 2 (Customer awareness and ability to choose competitive alternatives) and the document summary at Chapter 6
  - existing/potential competitors to consider the issues discussed in Chapters 4 (The potential for further competition) and the document summary at Chapter 6.
- 1.29. In addition, at Chapter 3, we present a summary of ENWL's market share analysis and we seek the views of interested parties on the data which ENWL have provided us with. At Chapter 5 we set out ENWL's current position against the Legal Requirements Test.
- 1.30. We encourage all respondents to read ENWL's full Competition Notice which is available on our website as an associated document to this consultation.

## 2. Customer awareness of and ability to choose competitive alternatives

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### Chapter Summary

This chapter seeks customers' views relating to awareness of competitive alternatives. In particular it asks whether customers are able to make informed decisions in choosing a connections provider and whether the competitive alternatives available to them bring them the service and price they expect to receive.

### Question box

**Question 1: Are customers aware of competitive alternatives available in each RMS?**

**Question 2: Do customers consider that they have effective choice in each RMS? Ie, are they easily able to seek alternative quotations?**

**Question 3: Do customers consider that ENWL takes appropriate measures to ensure that customers, in each of the RMS, are aware of the competitive alternatives available to them?**

**Question 4: Do customers consider that quotations provided by ENWL for connections in each of the RMS are clear and transparent? Do they enable customers to make informed decisions whether to accept or reject a quote?**

**Question 5: For each of the RMS, in ENWL's area, do customers consider that they have benefitted from competition? Ie, have they seen improvements in ENWL's price or service quality or have they been able to source a superior service or better price from ENWL's competitors?**

2.1. We consider that for effective competition to exist customers must have a real choice of connection providers. In determining whether this choice exists, in addition to the number of competitors active in each of the RMS, we will consider:

- customers' awareness of alternative providers
- the ability of customers to make informed decisions, and
- whether competitive alternatives to ENWL offer customers an effective choice of connections provider and the quality of service and/or value for money that they expect to receive.

## Number of competitive alternatives

- 2.2. In its Competition Notice ENWL asserts that in 2010-11 there were 21 ICPs active in their area, six of which had been active since 2006-07. It also asserts that, in both 2008-09 and 2009-10 there were 17 ICPs operating in the ENWL area.
- 2.3. Based on this information, we would expect customers to face an effective choice of supplier when they are looking for connections. We would like to understand if this is the experience of customers and whether they have been able to obtain quotes from competing ICPs in each RMS in ENWL's area. We are also interested in whether they are confident that as a customer they have a choice between ENWL and alternative connection providers in each of the RMS.

## Promoting awareness of competition

- 2.4. While the figures presented by ENWL show a number of alternative providers operating in their area, we note that where a lack of customer knowledge/engagement exists customers will not be able to take advantage of competitive alternatives.
- 2.5. We consider that ENWL has a role to play in promoting awareness of competitive alternatives to customers. We note the following points from ENWL's Competition Notice:
  - ENWL assert that its website<sup>9</sup>, together with its single standard application form for demand customers and the text in its statutory quotation helps make customers aware that there are alternative approaches (competitive options) available for them to choose.
  - ENWL assert that they are active with customer representative groups including the House Builders Federation and the Street Lighting Steering Group.
  - ENWL assert that it conducts regular customer satisfaction surveys and that feedback from those surveys is used to make process improvements.
  - ENWL assert that its established process and procedures for competition have allowed a consortium of Local Authorities to establish a framework contract for one or more ICPs to provide street lighting services. Further, they consider that this could result in 57 per cent of all street lighting work in their area to be carried out by third parties.

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<sup>9</sup> <http://www.enwl.co.uk/content/OurServices/ElectricityConnections.aspx>

- 2.6. We seek customers' views on the assertions made by ENW. In particular, we are interested in whether customers' consider that ENWL takes appropriate measures to make customers in each RMS aware of the competitive alternatives available to them. For example, in information available to customers throughout the connections process, including on its website<sup>10</sup>, connections literature, application forms, budget estimates, quotations etc.

## Customer choice

- 2.7. In addition to the existence of alternative connection providers in ENWL's area and customer awareness, we consider that for customers to have effective choice there must be transparency in terms of connection timeframes and price. Customers need to receive transparent quotations so that they are easily able to compare DNO and competitor quotations and make an informed decision as to which to choose. Where customers are not able to easily make this choice they may be less likely to engage with competitive alternatives to the DNO.
- 2.8. We note the following from ENWL's Competition Notice:
- ENWL asserts that the breakdown of services featured in their quotes clearly shows how the non-contestable elements are derived.
  - ENWL asserts that a breakdown of charges is provided in all quotations over £10,000.
  - ENWL asserts that they give appropriate transparency to customers both in terms of the work content included in the quote and transparency of the charges.
  - ENWL suggest that their approach to price and transparency of pricing is the same in each RMS.
- 2.9. We seek customers' views on these points made by ENWL. In particular, we seek customers' views as to whether quotations provided by ENWL for connections in each of the RMSs are clear and transparent and whether they enable customers to make an informed decision to accept or reject a quote. For example, in ENWL's quotes is it clear to what each charge relates?
- 2.10. In addition, for each of the RMS we are interested in whether customers consider that they have benefitted from competition in ENWL's area? Such a benefit could be seen either in terms of improvements in ENWL's services/charges in the face of competition or by new entrants providing a superior level of service/better price.

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<sup>10</sup> <http://www.enwl.co.uk/content/OurServices/ElectricityConnections.aspx>

## 3. ENWL's assessment of its market share

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### Chapter Summary

This Chapter presents a summary of ENWL's market share analysis and seeks interested parties views.

### Question box

**Question 1: Do interested parties agree with the assertions made by ENWL in its analysis of the level of competition in its area in each of the RMSs? In particular, do interested parties consider that the data provided by ENWL gives a clear indication of the current level of competitive activity in each of the RMSs?**

**Question 2: Considering the market share currently retained by ENWL and the number of ICPs currently active in each of the RMSs, do interested parties consider that competition in each of the RMSs is at a level that in itself indicates that effective competition exists?**

- 3.1. In this chapter, we provide a brief summary of the market share analysis set out in ENWL's Competition Notice. We also highlight some of the assumptions ENWL has used in estimating market share.
- 3.2. We ask interested parties whether the data provided by ENWL gives a clear indication of the current level of competitive activity in each RMS. We also ask interested parties, considering the market share currently retained by ENWL and the number of ICPs currently active in each of the RMSs, whether (in their view) competition in each of the RMSs is at a level that in itself indicates that effective competition exists.
- 3.3. The level of market share ENWL asserts is held by its competitors varies by RMS. The data sources and periods ENWL has used to calculate retained market share also vary by RMS. All market share figures reproduced below are based on connection volumes rather than value. Please refer to ENWL's Competition Notice for full details of their analysis:
  - In metered connections, they assert that they have lost 75 per cent of the EHV demand connections market and 34 per cent of the LV market to new entrants. In the HV RMS, they also assert that they have lost 62 per cent of LV connections involving HV work and 41 per cent of HV only work.
  - In DG connections, ENWL assert that they retain 100 per cent of the LV connections market. They have not provided separate data for the HV and EHV RMSs but together they assert that they have lost 56 per cent of the market.

- In unmetered connections overall they assert that they have lost 23 per cent of the market as a whole, this includes 0.5 per cent of Local Authority (LA) connections and 76 per cent of Private Finance Initiative (PFI) connections. ENWL assert that in 2010-11 they have lost zero per cent of the 'other work' RMS to competitors.
- 3.4. ENWL assert that many of the geographic areas where there has been no competitive activity are sparsely populated rural areas where connections activity in general is low.
- 3.5. ENWL asserts that in 2010-11 there were 21 ICPs active in their area, six of which had been active since 2006-07. They further assert that in both 2008-09 and 2009-10 there were 17 ICPs operating in their area.
- 3.6. ENWL asserts that the number of ICPs active in its area indicates that it does not impose conditions that restrict new entrants from winning work and operating within their area.

### **Points to note about ENWL's assessment of market share**

- 3.7. ENWL has based its historical market share analysis in its Competition Notice, in part, on CIR information.
- 3.8. ENWL asserts that the CIR data tends to overstate their market share, for a number of reasons. For example, CIR data includes connections in excluded market segments, such as one off domestic connections, as well as purely non-contestable services (such as service alterations) on which DNOs are unable to earn any margin. In contrast, the Competition Test should only look at market share in the contestable market segments.
- 3.9. It should also be noted that, CIR data records connection numbers by voltage at the point of connection rather than connections that fall within a particular RMS. This means a CIR category may include connections that fall across different RMSs. For example, an LV connection that involved HV work would have been reported in the CIR as an LV connection but it would fall into the HV work RMS.
- 3.10. ENWL assert that due to the time lag between project award and project completion, data showing completed connections may not be representative of current levels of competition. For 2010-11, ENWL has therefore calculated market share using quotes accepted, rather than connections constructed. ENWL assert that this provides a more contemporary picture of the level of competition.



- 3.11. ENWL has also made a number of assumptions in arriving at their estimate of retained market share. We seek respondents' views on the reasonableness of these assumptions which are set out below.
- 3.12. ENWL's estimate of their market share in the LV demand work RMS is based on an assumption of each property's connection accounting for 2kW. They have had to use this estimate as ENWL does not know the number of connections made to IDNO networks in their area.
- 3.13. ENWL's estimate of their market share in the HV demand work RMS is based on an assumption of one customer per IDNO connection for HV only connections and 2kW per property for LV connections (involving HV work). They have had to use this estimate as ENWL does not know the number of connections made to IDNO networks in their area.
- 3.14. In looking at historical CIR data, ENWL has assumed that the HV connections reported in the CIR all sit within the HV RMS. They have made this assumption in the absence of exact data and because they assert that very few HV customers (<5 per cent) require EHV work. They have also estimated that about 12 per cent of the LV connections reported in the CIR fall in the HV RMS since they require some HV works.
- 3.15. In considering the percentage of the market share it retains in the HV DG and EHV DG RMSs (by value), ENWL has estimated that the value of ICP work. ENWL has estimated this as it does not hold information on the charges made by ICPs. Using this estimate ENWL considers that it retains only 27 per cent of the value of the market.

## 4. The potential for further competition

### Chapter Summary

This chapter seeks to capture the views of existing/potential competitors on the potential for future competitive activity in each RMS. It considers the number of competitors already in the market, potential barriers to the further growth of competition and what factors influence competitors' decisions to enter a RMS.

### Question box

**Question 1: For each RMS, do existing/potential competitors agree with the statements made by ENWL regarding the number of competitors active (and the ease at which new entrants can operate) in their area?**

**Question 2: For each RMS, how do existing/potential competitors consider ENWL's organisational structure, procedures and policies, compare to those encountered elsewhere in the gas and electricity markets or other industries? In particular, do you consider that they reflect best practice, or are there areas where ENWL fall short of this?**

**Question 3: For each RMS, do existing/potential competitors consider that barriers exist that:**

- a) prevent existing competitors from competing effectively with ENWL?
- b) obstruct or delay connection providers entering ENWL's area?
- c) obstruct or delay connection providers currently working in ENWL's area in one or more RMSs, starting to compete in another RMS in ENWL's area?

**Question 4: If you do consider that barriers exist, please explain: what you consider the impact of the barrier to be? Whether the issue has been addressed by ENWL or whether it is outside of their control? What you would like to see changed to allow competitors to compete on a level playing field/facilitate market entry?**

**Question 5: For each RMS, what are existing/potential competitors' views of ENWL's efforts to extend contestability? In particular, do ENWL engage with stakeholders to develop procedures that promote competition? Do you consider that the extension of contestability is likely to stimulate further competition?**

**Question 6: For each RMS in ENWL's area, do existing/potential competitors consider that they will enter new RMSs/expand in the RMSs they already compete in, within the next 5 years. What factors do they expect to influence their decision? Eg, economic conditions, ENWL's margin regulation being lifted, etc.**

**Question 7: Do existing/potential competitors consider that there are any types of connections in any of the RMSs, or geographic locations in ENWL's area, that by their nature, are not attractive to competition?**

- 4.1. As discussed in Chapter 1, while we will consider current levels of competition when determining whether to lift price regulation in each of the RMS, it will only be considered alongside the potential for further competition to develop in each of the RMSs.
- 4.2. This chapter asks for competitors' views on the potential for further competition in ENWL's area. In particular it asks for views on the ease with which competitors can enter and compete in ENWL's area and whether barriers to competition exist. We also invite views on how competition in ENWL's area might develop in the future.

## **Ease of entering and competing in the market**

### **The number of competitors active in the market**

- 4.3. We consider that the ease at which competitors can enter the market and the number of competitors leaving the market is an indicator of the potential for further competition to develop.
- 4.4. In its Competition Notice ENWL has provided details on the number of ICPs active in their area since 2006-07:
  - ENWL asserts that in 2010-11 there were 21 different companies active in providing connections services in their area.
  - ENWL asserts that in 2008-09 and 2009-10 there were 17 different companies active in providing connections services in their area.
  - ENWL asserts that the number of DNOs active in ENWL's area demonstrates the ease with which new entrants can enter into and operate in their area.
- 4.5. While ENWL has not been able to provide information on ICP market share by RMS, it has used CIR data to provide it for LV and HV connections. The table below uses this information, along with further CIR data (showing the number of connections completed by ENWL and IDNOs) to show the percentage of connections completed by each provider.

**Table 4.1 – Percentage of connections completed by provider**

<b>Connection Provider</b>	<b>LV connections</b>	<b>HV connections</b>
<b>ENW</b>	70%	33%
<b>ICP 1</b>	7%	20%
<b>ICP 2</b>	7%	4%
<b>ICP 3</b>	4%	18%
<b>ICP 4</b>	2%	0%
<b>ICP 5</b>	1%	0%
<b>ICP 6</b>	0%	0%
<b>All other ICPs</b>	1%	8%
<b>IDNOs</b>	10%	16%

- 4.6. For each of the RMSs, we ask existing/potential competitors whether they agree with the above assertions made by ENWL. We ask that wherever possible they provide evidence to support their view.

#### **Barriers to effective competition**

- 4.7. While ENWL asserts that there are a number of competitive providers operating in their area, given the levels of market share retained by ENWL in each of the RMSs (see Chapter 3) we consider that it is important to look at whether barriers to competition exist in the market. This includes considering whether barriers exist that:

- prevent competitors from competing effectively in each of the RMSs – for example, barriers that may make it difficult for competitors to compete with the DNO in terms of service or price
- prevent further competition in each of the RMSs – for example, barriers that may make entering a RMS in ENWL’s area unattractive, or barriers that obstruct or delay entry to a RMS.

- 4.8. In considering barriers to competition, we are not only considering potential barriers that are within the DNO’s gift to remove, but also natural or regulatory barriers that may obstruct competition from developing further.

#### *Potential barriers to competition raised by the Electricity Connections Steering Group*

- 4.9. Earlier this year we asked members of the Electricity Connections Steering Group (ECSG) to identify issues that they considered potential barriers to competition.
- 4.10. The purpose of the exercise was to provide a starting point for DNOs to engage with stakeholders to consider whether barriers to competition existed

in their area. The potential barriers raised were not DNO specific nor were they presented as a definitive list of barriers.

- 4.11. We explained to DNOs that where they identify barriers to competition they should work to remove these barriers, or if they are not within the DNO's control, bring the issue to the attention of Ofgem.
- 4.12. The potential barriers highlighted by the ECSG included:
- Availability of information - ease of access, speed of access, ensuring information is up-to-date (current).
  - Adoption agreement security arrangements – these can sometimes be viewed as overly onerous. The ECSG questioned whether the numbers of faults seen in adopted assets necessitated the level of bond DNOs require in some circumstances.
  - DNO inspection and monitoring practices - these can sometimes be viewed as overly onerous. The ECSG questioned whether the numbers of faults seen in adopted assets necessitated the level of inspection and monitoring DNOs require in some circumstances. They also questioned whether DNOs subject their own staff to the same levels of inspection and monitoring.
  - Terms in connection agreements / types of connection agreements available – DNOs are sometimes viewed as being inflexible, for example insisting on tri-partite agreements.
  - Letters of Authority – the ECSG considered that there was inconsistency in what DNOs require.
  - Service timeframes – DNOs are sometimes viewed as not providing services not covered by SLC 15 within reasonable timeframes. There are concerns that DNOs require different levels of minimum information before an application is deemed complete.
  - Developing ongoing relationships - DNOs are often seen to be poor at 'soft skills', eg. communication, cooperativeness, relationships with competitors etc.
  - Scope of contestable works – the scope of contestability can sometimes vary from DNO to DNO, for example the assets competitors may work on. Competitors consider that the scope of what is contestable could be extended.
  - Legal process - DNOs are sometimes slow to progress and complete legal documents which can leave competitors unable to offer clients firm timescales for connection.

- Difference in non-contestable charges between statutory and competitive quotations - customers can be unable to transfer non-contestable costs detailed in DNO statutory quotation to a competitive quote. Higher non-contestable charges can be incurred by competitors (compared to DNO statutory quotation customers) to cover the processing of competitive applications.
- Dispute resolution – Competitors raised that the length of time sometimes taken to resolve disputes can leave them unable to compete effectively.

*Barriers to competition in ENWL's area*

- 4.13. ENWL's Competition Notice discusses its policies in relation to each of the potential barriers to competition raised by the ECSG<sup>11</sup>. However, it does not include evidence of stakeholder engagement exercises undertaken to identify, for each of the RMSs in its area, whether the issues raised by the ECSG are barriers to competition at all or whether other barriers to competition exist. We note however, that ENWL's Competition Notice does include letters of endorsement from ICPs operating in its area.
- 4.14. We seek competitors' views as to whether the organisational structure of ENWL's business, including procedures and processes, enables competitors to compete with the timescales for connection (from quote to energisation) offered by ENWL. We also seek views on whether it offers any other inherent advantage to ENWL over its competitors.
- 4.15. We are also interested in how ENWL's organisational structure, procedures and policies compare to those encountered by competitors elsewhere in the gas and electricity markets or other industries. In particular, we are interested in whether ENWL's procedures and policies reflect best practice or whether there are areas where they fall short of this, either in comparison to other DNOs or companies offering similar services in other industries.
- 4.16. We also seek competitors' views as to whether the non-contestable charges levied by ENWL for statutory connections, are consistent with those levied for competitive quotations and easily comparable with competitive connections.
- 4.17. Finally, we seek competitors' views as to whether any other barriers to competition exist in ENWL's area in any of the RMSs, including any barriers that:
- prevent existing competitors from competing effectively with ENWL
  - obstruct or delay connection providers entering ENWL's area to compete in any of the RMSs

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<sup>11</sup> Please refer to ENWL's Competition Notice for further information.

- obstruct or delay connection providers currently working in ENWL's area in one or more RMSs, starting to compete in another RMS in ENWL's area.
- 4.18. We ask that, if competitors do consider that barriers exist, they consider the impact of the identified barrier and whether this has been addressed by ENWL or is beyond their control. We also ask that, wherever possible, they provide evidence to support their view.

### **The future growth of competition**

- 4.19. In the absence of barriers to competition, in a market where effective competition exists, we would expect competitive providers to try to grow their market share. Therefore, we are interested in whether existing/potential competitors intend to grow their market share/start competing in any of the RMSs in ENWL's area. We are also interested in the factors that competitors take into consideration in deciding whether to compete with ENWL in each RMS.

### **The potential for competition to develop**

- 4.20. Further to the potential barriers to competition discussed earlier in this chapter, we note that the potential for competition to develop in each RMS may be influenced by a number of factors, for example the level of contestable service offered by ENWL to its customers, economic conditions, the level of margin charged by ENWL, etc.
- 4.21. We seek the views of existing/potential competitors on what factors they consider are key influences on the development of competition in each of the RMSs in ENWL's area.
- 4.22. For each RMS, we also seek the views of existing and potential competitors in ENWL's area, on the potential for them to enter new RMSs, or to grow their share of the RMSs they are currently in within the next five years.
- 4.23. Further, we seek existing/potential competitors' views as to whether there are any types of connection in any of the RMSs, or geographic locations in ENWL's area, that by their nature, are not attractive to competition?

### **Efforts to open up non-contestable activities to competition**

- 4.24. As discussed in the Chapter 1 of this document, connections works are split between works that are contestable (competitive) and those that are non-contestable (can only be completed by the DNO).<sup>12</sup>
- 4.25. We believe that the opening up non-contestable activities to competitors may provide further opportunities and incentives for competition to develop in each of the RMSs. This is because it reduces ICP reliance on DNOs to provide essential services and it increases the scope of works for which ICPs can compete.
- 4.26. Ofgem has undertaken a number of projects in the past to support the extension of contestability. For example, in 2004 we proposed that contestability be extended to live jointing to ICP installed mains. Following this, in 2006, we worked with industry to extend the scope of contestable works to include certain elements of reinforcement and diversionary works fully funded by customers.
- 4.27. We are aware that a number of ICPs and customers consider that contestability can be further extended to the benefit of customers. Recently we have:
- established a working group to extend contestability to live jointing on existing mains
  - consulted<sup>13</sup> on introducing competition to part funded connections, and
  - set up a working group to consider the extension of contestability to self POC.<sup>14</sup>
- 4.28. We consider that to enable the industry to conclude whether an activity should become contestable, working groups require active and supportive input from DNOs. This includes, amongst other things, DNOs facilitating trials, overcoming barriers to competition and sharing learning. It also requires DNOs to measure trial success and make trial working practices business as usual as soon as it is possible.
- 4.29. Not only do we consider active DNO participation in Ofgem working groups and industry trials to be important, we also consider that DNOs themselves

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<sup>12</sup> A full explanation of what is currently contestable/non-contestable in ENWL's area can be found in ENWL's Connection Charging Methodology which is available on its website:

<http://www.enwl.co.uk/content/ElectricityRetailerInfo/ChargingInformation.aspx>

<sup>13</sup> Consultation on part funded connections

<http://www.ofgem.gov.uk/Networks/Connectns/CompinConn/Pages/CompinCnctns.aspx>

<sup>14</sup> Details of these working groups can be found at

<http://www.ofgem.gov.uk/Networks/Connectns/ElecConnSteerGrp/subgroups/Pages/subgroups.aspx>



should engage with the industry to consider where it is possible to further extend contestability to facilitate competition. We do not consider that Ofgem's involvement sets the limit of what can be deemed contestable by a DNO.<sup>15</sup>

4.30. We note the following from ENWL's Competition Notice:

- ENWL assert that along with Scottish Power, they were the first DNO to introduce live jointing for connections.
- ENWL assert that they have actively supported the extension of contestability to live jointing to existing mains and that they were the first DNO to instigate field trials.

4.31. We seek respondent's views of ENWL's efforts to open up non-contestable activities to competition. In particular, we seek views on how ENWL engage with stakeholders in considering the extent of contestability and in developing procedures and processes (at the trial stage and for newly contestable activities) that promote competition.

4.32. We ask existing and potential competitors whether they consider the extension of contestability is likely to stimulate further competition in any of the RMSs in ENWL's area.

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<sup>15</sup> While we consider that DNOs are free to extend contestability, we recognise that barriers beyond DNOs' control may prevent this happening without Ofgem's support. If a DNO or other party encountered regulatory or other barriers to the extension of contestability we would expect to be made aware of this.

## 5. ENWL's compliance with the Legal Requirements Test

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### Chapter Summary

This chapter sets out our assessment of ENWL's position against the Legal Requirements Test.

- 5.1. CRC 12 and the Final Proposals Document set out a Legal Requirements Test that must be considered in conjunction with the Competition Test when the Authority determines whether to lift price regulation in any RMS.

### The Legal Requirements Test

- 5.2. Compliance with the Legal Requirements Test is a necessary pre-condition for passing the Competition Test. The legal requirements set out in the test are for the DNO to have no enforced breaches in the given regulatory year of:
- Standard Licence Condition (SLC) 12.6(c): Requirement to offer terms for use of system and connection
  - SLC 15: Standards for the provision of Non-Contestable Connection Services
  - SLC 15A: Connections policy and connection performance
  - SLC 19: Prohibition of discrimination under Chapters 4 and 5, and
  - The Competition Act 1998.

### ENWL's current position

- 5.3. For the purposes of ENWL's application, as the notice was submitted on 22 July 2011, the relevant regulatory year is 2011-12 which runs from 1 April 2011 to March 31 2012.
- 5.4. Whilst the 2011-12 regulatory year is yet to run its course, there are currently no enforced breaches against ENWL in any of the five strands of the Legal Requirements Test in this regulatory year.

### Future compliance with the Legal Requirements Test

- 5.5. Although there are currently no enforced breaches against ENWL in this regulatory year, there is an ongoing investigation relating to ENWL's

compliance with the Competition Act 1998. Details of this investigation can be found on the Ofgem website.<sup>16</sup>

- 5.6. If it happened that ENWL no longer met the Legal Requirements Test after price regulation had been lifted, the Authority can use the "Clawback Direction" set out in CRC 12.40 to reinstate price regulation and require ENWL to pay back any earnings in excess of the four per cent regulated margin allowance.

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<sup>16</sup> Details of this investigation can be found at:  
<http://www.ofgem.gov.uk/About%20us/enforcement/Investigations/CurrentInvest/Pages/CurrentInvstqtns.aspx>

## 6. Summary

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### Chapter Summary

This chapter summarises the issues discussed in this consultation. It seeks views from customers and existing/potential competitors on whether, taking all of the issues discussed into consideration, price regulation should be lifted in each RMS.

### Question box

**Question 1: For each RMS, do customers consider that there is currently effective choice for customers? In particular, do customers feel that levels of choice, value and service will be protected and improve if the restriction on ENWL's ability to earn a margin is removed?**

**Question 2: For each RMS, do existing/potential competitors consider that there is scope for existing competitors to grow their market share (for example, if ENWL put up its prices or if its quality dropped), or are there factors constraining this?**

**Question 3: For each RMS, do existing/potential competitors consider that there is scope/appetite for new participants to enter the market? Do competitors consider that they would be able to provide similar or better services than existing participants or are there factors constraining this?**

**Question 4: For each RMS, given your overall view of ENWL, do you consider that we can have confidence in them to operate appropriately in the circumstance that price regulation were lifted?**

**Question 5: For each RMS, do you consider that there are factors not addressed in this consultation that should be taken into consideration in determining whether price regulation should be lifted in ENWL's area.**

- 6.1. As discussed throughout this document, we consider that effective competition in each RMS should not be determined by looking at current market share data alone.
- 6.2. We note that ENWL retains a significant proportion of the majority of the RMSs for which it wishes price regulation to be lifted. However, we also recognise that price controls may limit the attractiveness of a market to new entrants and that the current level of regulated margin may be set too low and may not enable third parties to compete effectively.
- 6.3. We reiterate that the intention of our assessment is to assess whether, in the event that price regulation was removed, competition could be relied upon to deliver choice, quality and value for customers. We ask respondents to

consider whether, on balance, consumer interests in each RMS are better protected by regulation than they would be by competition. We also remind respondents that if price regulation is lifted in any RMS, we will continue to monitor ENWL's compliance with Competition Law and we will take seriously any evidence of anti-competitive behaviour.

6.4. We seek stakeholders responses to the questions posed throughout this document. In particular we seek customer and existing/potential competitors' views on the following:

- Is there is currently effective choice for customers in each RMS? In particular, whether customers feel that levels of choice, value and service will be protected and improve if the restriction on ENWL's ability to earn a margin is removed?
- Is there is scope/appetite for current independent connection providers to grow their market share (for example, if ENWL put up its prices or if its quality dropped), or are there factors constraining this?
- Is there is scope/appetite for new participants to enter the market? Would they be able to provide similar or better services than existing participants or are there factors constraining this?
- Given your overall view of ENWL, can we have confidence in them to operate appropriately in the circumstance that price regulation was lifted.

6.5. We also seek respondents' views as to whether there are factors not addressed in this consultation that should be taken into consideration in determining whether price regulation should be lifted in ENWL's area in each RMS.

6.6. In conclusion, we remind respondents' that whilst this consultation document has highlighted some key points raised in ENWL's Competition Notice, we encourage all respondents to read ENWL's full Competition Notice which is available on our website as an associated document to this consultation.

6.7. We would like to remind respondents that since the Authority is required to make a determination for each RMS separately, they should draft their responses in such a way that they clearly set out which market segment(s) each section of their response relates.<sup>17</sup> We also ask, wherever possible that respondents provide evidence to verify their claims.

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<sup>17</sup> The RMS are set out at Appendix 3 of this document

## Appendices

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## Appendix 1 - Consultation Response and Questions

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1.1. Ofgem would like to hear the views of interested parties in relation to any of the issues set out in this document.

1.2. We would especially welcome responses to the specific questions which we have set out at the beginning of each chapter heading and which are replicated below.

1.3. Responses should be received by 7 October 2011 and should be sent to:

- Rebecca Langford
- Distribution Policy
- Ofgem, 9 Millbank, London, SW1P3GE
- 0207 901 7388
- [Rebecca.Langford@Ofgem.gov.uk](mailto:Rebecca.Langford@Ofgem.gov.uk)

1.4. Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website [www.ofgem.gov.uk](http://www.ofgem.gov.uk). Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

1.5. Respondents who wish to have their responses remain confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. It would be helpful if responses could be submitted both electronically and in writing. Respondents are asked to put any confidential material in the appendices to their responses.

1.6. Next steps: Having considered the responses to this consultation, Ofgem intends to publish its decision in relation to ENWL's competition notice by 21 November 2011. Any questions on this document should, in the first instance, be directed to:

- Rebecca Langford
- Distribution Policy
- Ofgem, 9 Millbank, London, SW1P3GE
- 0207 901 7388
- [Rebecca.Langford@Ofgem.gov.uk](mailto:Rebecca.Langford@Ofgem.gov.uk)

## **CHAPTER 2**

**Question 1:** Are customers aware of competitive alternatives available in each RMS?

**Question 2:** Do customers consider that they have effective choice in each RMS? Ie, are they easily able to seek alternative quotations?

**Question 3:** Do customers consider that ENWL takes appropriate measures to ensure that customers, in each of the RMS, are aware of the competitive alternatives available to them?

**Question 4:** Do customers consider that quotations provided by ENWL for connections in each RMS are clear and transparent? Do they enable customers to make informed decisions whether to accept or reject a quote?

**Question 5:** For each RMS, in ENWL's area, do customers consider that they have benefitted from competition? Ie, have they seen improvements in ENWL's price or service quality or have they been able to source a superior service or better price from ENWL's competitors?

## **CHAPTER 3**

**Question 1:** Do interested parties agree with the assertions made by ENWL in its analysis of the level of competition in its area in each RMS? In particular, do interested parties consider that the data provided by ENWL gives a clear indication of the current level of competitive activity in each RMS?

**Question 2:** Considering the market share currently retained by ENWL and the number of ICPs currently active in each RMS, do interested parties consider that competition in each RMS is at a level that in itself indicates that effective competition exists?

## **CHAPTER 4**

**Question 1:** For each RMS, do existing/potential competitors agree with the statements made by ENWL regarding the number of competitors active (and the ease at which new entrants can operate) in their area?

**Question 2:** For each RMS, how do existing/potential competitors consider ENWL's organisational structure, procedures and policies, compare to those encountered elsewhere in the gas and electricity markets or other industries? In particular, do you consider that they reflect best practice, or are there areas where ENWL fall short of this?

**Question 3:** For each RMS, do existing/potential competitors consider that barriers exist that:

- a)** prevent existing competitors from competing effectively with ENWL?
- b)** obstruct or delay connection providers entering ENWL's area?
- c)** obstruct or delay connection providers currently working in ENWL's area in one or more RMSs, starting to compete in another RMS in ENWL's area?



**Question 4:** If you do consider that barriers exist, please explain: what you consider the impact of the barrier to be? Whether the issue has been addressed by ENWL or whether it is outside of their control? What you would like to see changed to allow competitors to compete on a level playing field/facilitate market entry?

**Question 5:** For each RMS, what are existing/potential competitors' views of ENWL's efforts to extend contestability? In particular, do ENWL engage with stakeholders to develop procedures that promote competition? Do you consider that the extension of contestability is likely to stimulate further competition?

**Question 6:** For each RMS in ENWL's area, do existing/potential competitors consider that they will enter new RMSs/expand in the RMSs they already compete in, within the next 5 years. What factors do they expect to influence their decision? Eg, economic conditions, ENWL's margin regulation being lifted, etc.

**Question 7:** Do existing/potential competitors consider that there are any types of connections in any of the RMSs, or geographic locations in ENWL's area, that by their nature, are not attractive to competition?

## **CHAPTER 6**

**Question 1:** For each RMS, do customers consider that there is currently effective choice for customers? In particular, do customers feel that levels of choice, value and service will be protected and improve if the restriction on ENWL's ability to earn a margin is removed?

**Question 2:** For each RMS, do existing/potential competitors consider that there is scope for existing competitors to grow their market share (for example, if ENWL put up its prices or if its quality dropped), or are there factors constraining this?

**Question 3:** For each RMS, do existing/potential competitors consider that there is scope/appetite for new participants to enter the market? Do competitors consider that they would be able to provide similar or better services than existing participants or are there factors constraining this?

**Question 4:** For each RMS, given your overall view of ENWL, do you consider that we can have confidence in them to operate appropriately in the circumstance that price regulation were lifted?

**Question 5:** For each RMS, do you consider that there are factors not addressed in this consultation that should be taken into consideration in determining whether price regulation should be lifted in ENWL's area.

## Appendix 2 – The Legal Requirements and Competition Tests

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1.7. Both the Legal Requirements Test and the Competition Test are set out in DPCR5 Final Proposals and referenced in CRC 12. Both Tests are reproduced below.

1.8. The overriding objective of the competition test is to enable DNOs to demonstrate that the market is working effectively for their customers. The DNO's evidence should enable Ofgem to take a holistic view of the effectiveness of the market and prescribe an appropriate course of action (i.e. allow regulated or unregulated margins, or further work to remove barriers). Accepting that all markets are different, there will be a flexible approach to the format and scope of the DNO's evidence case subject to the legal requirements being met.

### **The Legal Requirements Test**


1.9. Compliance with the legal requirements is essential for passing the competition test. The legal requirements are for the DNO to have no enforced breaches in the given regulatory year of:

- standard licence condition 12.6(c): Requirement to offer terms for use of system and connection
- amended standard licence condition 15: Standards for the provision of Non-Contestable Connections Services
- new standard licence condition 15A: Connections policy and connection performance
- standard licence condition 19: Prohibition of discrimination under Chapters 4 and 5, and
- the Competition Act 1998.

### **The Competition Test**

1.10. Overall, we will be looking to see whether we can rely on real competition or the threat of competition to protect consumer interests rather than regulation of the margin earned by the DNO. There are a number of key issues that DNOs should consider in making their evidence case. This is not intended to be an exhaustive list of requirements but provides guidance on aspects of the market that we will look at:

- barriers to competition, including parts of the market where competition is not feasible and the reasons why



## Consultation on Electricity North West Limited's Competition Notice

- actual and potential competition (this is intended to capture views on levels of competitive activity)
- price and transparency of pricing to customers
- promoting awareness of competitive alternatives amongst connection customers
- competition in connections procedures and processes, and
- efforts to open up non-contestable activities to competition.

# Appendix 3 – The Relevant Market Segments

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## 1.11. Metered Demand Connections

- Low Voltage (LV) Work - LV connection activities involving only LV work, other than in respect of the Excluded Market Segments (see paragraph 2.4 below).
- High Voltage (HV) Work: LV or HV connection activities involving HV work (including where that work is required in respect of connection activities within an Excluded Market Segment).
- HV and Extra High Voltage (EHV) Work: LV or HV connection activities involving EHV work.
- EHV work and above: extra high voltage and 132kV connection activities.

## 1.12. Metered Distributed Generation (DG)

- LV work: low voltage connection activities involving only low voltage work.
- HV and EHV work: any connection activities involving work at HV or above.

## 1.13. Unmetered Connections

- Local Authority (LA) work: new connection activities in respect of LA premises.
- Private finance initiatives (PFI) Work: new connection activities under PFIs.
- Other work: all other non-LA and non-PFI unmetered connections work

## 1.14. The Excluded Market Segments are as follows:

- LV connection activities relating to no more than four domestic premises or one-off industrial and commercial work
- connection activities in respect of a connection involving three-phase whole current metering at premises other than Domestic Premises.

## Appendix 3 - Glossary

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### C

#### Competition Test

The Competition Test is set out in Distribution Price Control 5 Final Proposals - Incentives and Obligations and referenced in CRC 12. It is also recreated at Appendix 2 to this document.

#### CIR [Connections Industry Review](#)

An annual Ofgem publication that sets out how the gas and electricity connections market has developed in the given year. It also details how licensed companies have complied with their connections related obligations and standards.

#### CRC [Charge Restriction Condition](#)

A special condition of the Electricity Distribution Licence.

### D

#### DG [Distributed Generation](#)

Distributed generation is also known as embedded or dispersed generation. It is an electricity generating plant connected to a distribution network rather than the transmission network. There are many types and sizes of distributed generation facilities. These include Combined Heat and Power (CHP), wind farms, hydro electric power or one of the new smaller generation technologies.

#### DNO [Distribution Network operator \(Electricity\)](#)

There are 14 Electricity Distribution Network Operators who carry electricity from the transmission system and some distributed generators to industrial, commercial and domestic end users. They have distribution service areas which correspond to those of the former public electricity suppliers (before privatisation in 1990). They are owned by seven different corporate groups.

#### DPCR [Distribution Price Control Review](#)

The price review applicable to electricity distribution network operators. The fifth Distribution Price Control Review (DPCR5) was launched in April 2010.

#### DSA [Distribution Service Area](#)

Electricity DNOs each have a distribution service area. With the

exception of embedded independent networks they are monopoly operators within that area and are subject to particular licence requirements accordingly.

## **E**

### **ECSG** Electricity Connections Steering Group

Advises Ofgem on the measures that are required to support the development of competition in the electricity connections market.

### **EHV** Extra High Voltage

Over 22 kV but less than or equal to 72 kV

### **EMS** Excluded Market Segments

As set out in CRC 12. In DPCR5 Final Proposals Ofgem considered that that competition was not viable in these market segments at that time or in the foreseeable future. DNOs are not able to earn a regulated margin in these market segments.

### **ENWL** Electricity North West Limited

A Licensed Distribution Network Operator

### **HV** High Voltage

Exceeds 1 kV but does not exceed 22 kV

## **I**

### **ICP** Independent Connections Provider

An independent connections provider not affiliated to a distribution network operator.

### **IDNO** Independent Distribution Network Operator (Electricity)

In 2007-08 there were four independent electricity distribution network operators. IDNOs own and operate various small networks embedded within DNO networks. IDNOs do not have DSAs.

### **IN** Independent Network

For the purpose of this document, 'independent network' refers to a network within a host DNO's DSA which is owned and operated either by an IDNO or by another DNO.

**L**

**Legal Requirements Test**

The Legal Requirements Test is set out in Distribution Price Control 5 Final Proposals - Incentives and Obligations and referenced in CRC 12. It is also recreated at Appendix 2 to this document.

**LV**

**Low Voltage**

Does not exceed one kV

**P**

**POC**

**Point of Connection**

The point at which new works are connected to the existing distribution network.

**R**

**Regulatory Year**

From 1 April - 31 March.

**RMS**

**Relevant Market Segment**

As set out in CRC 12. In DPCR5 Final Proposals Ofgem considered that that competition is viable in these market segments. DNOs currently charge a four per cent margin on contestable services provided in these market segments.

**S**

**SLC**

**Standard Licence Condition**

A Condition of the Electricity Distribution licence.

## Appendix 4 - Feedback Questionnaire

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1.15. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

1.16. Please send your comments to:

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