30 June 2009
Elena Ardines
Utility Regulator
Queens House
14 Queen Street
Belfast
BT1 6ER

Dear Elena

Re: Energy Retail Competition Work Programme: General Overview and Rationale

Thank you for providing firmus energy with this opportunity to respond to the above consultation.

Following on from last year's electricity and gas retail consultation, we are pleased to provide our view as to what we consider are the major impediments to supply competition and indeed what actions we feel need to be taken to help facilitate retail competition in Northern Ireland.

Given that we are now active in both the electricity and Greater Belfast gas markets we have offered a high-level overview of the key issues influencing firmus energy's participation in the competitive natural gas and electricity markets.

Having highlighted to the Utility Regulator our frustration in trying to enter these markets, on a level playing field to the incumbent suppliers, we would welcome the opportunity to discuss this response with you in detail.

Yours sincerely

Michael

Michael Scott
Business Development Manager

Background:

firmus energy's ambition is to compete fully in the electricity and Greater Belfast gas markets.

We believe that there are a number of strategic issues which need to be addressed and we also feel that there is a need for a change in approach by the Utility Regulator to open up these markets and make them attractive for customers and new entrants alike.

Natural gas:

Two years after full market opening and nearly 10 years after the first area was "theoretically opened" competition is extremely limited with 1 alternative supplier (firmus energy (Supply)) actively quoting in the IC contract sector.

We are keen to enter the tariff market in Belfast, at a critical mass level, as soon as systems allow. However, it is becoming increasingly apparent to us that system constraints, where a mere 25 switches per week are possible, are preventing us from targeting the tariff sector.

We feel that the Utility Regulator needs to outline what role it plans to play in proactively addressing and overcoming the issues.

Only by addressing these issues will suppliers be able to actively participate in the market, ensuring choice for consumers.

We would also be keen to understand what level of competition the Utility Regulator envisages and whether facilitating competition will mean regulating the incumbent's price offering and/or what other mechanisms he plans to use to enable new entrants gain market share.

firmus energy is of the opinion that whilst the Greater Belfast gas market and the retail electricity market are technically open for competition, little competitive pressures are evident. Equally we do not concur with the Utility Regulator's view that there is no requirement to regulate the (incumbent) industrial and commercial (IC) supply sector within the Greater Belfast, as the market is fully competitive.

Whilst firmus energy is not supportive of regulated tariff formulae for IC customers within Greater Belfast, new suppliers must have confidence that they are competing on a level basis with the incumbent.

We have evidence that the incumbent is freely using their existing, diverse customer base to artificially price discount selective customers, whether on wholesale gas price or supply costs, in order to keep new suppliers out of the market.

Conversely, competition in the gas market in RoI is significant in the IC sector where the incumbent (BGE) currently supplies less than 30% of the RTF sector and 4-5 suppliers are active including Phoenix (Supply).

Electricity:

There has been a high level of switching between the incumbent and the new supply entrants in the large IC sector and whilst this is encouraging, the fact that the majority of small IC consumers have remained with NIE Energy, together with a lack of competitive activity evident in the domestic sector to date, points to competitive issues in these sectors.

Competition is well developed in the LEIU sector with 4 active Second Tier suppliers. That said, 2 suppliers dominate – Energia and ESBie – and 'below cost' selling activities in the recent Spring contract round has illustrated a desire to maintain the effective duopoly in this sector.

Targeting of the SME sector is evidenced by Airtricity (limited discounts) and the other suppliers. However, legacy NIE tariff structures and the lack of HH meters fitted at SME sites has the propensity for customers to move from one ‘bad’ tariff to a marginally less ‘bad’ contract / discount tracker offer.

Indeed high level discussions between firmus energy and existing large IC gas customers highlights a perceived lack of real choice in terms of contract and supplier options in electricity.

Given the relative margin available to new suppliers, firmus energy believes that the requirement of new entrants (or their customers) to fit a ½ hourly meter to SME electricity customers at a cost of circa £295 is a barrier to competition. In many instances, the costs of fitting a new meter cannot be recovered over the lifetime of the supply contract (typically 12 months).

Given the new meter responsibilities of the NIE T&D division, we would argue that meters are a network asset and as such should be available for all customers free of charge to help facilitate competition. Again, the consolidation of all metering with the network company would also encourage technological developments in smart metering for the benefit of all users in the longer term.

Through the experience of our parent company, firmus energy is aware as to the potential for unexpected / unexplained changes to PSO, PSS and UoS charges to dramatically affect the economics of contracting with customers. Indeed, this is one of the key issues effecting BGE’s exit from the Northern Ireland electricity market in 2006.

Improved transparency in both the consultation around UoS etc. charges and the timeliness of their introduction is paramount of suppliers are able to compete profitably in the electricity market. firmus energy would welcome the opportunity to discuss further with the Utility Regulator on the experiences of our parent company and our views on how transparency can be improved.

As has been well publicised in the press, recent domestic electricity competition in RoI has resulted in almost 200,000 switches taking place in 4 months from launch, with customer discounts of between 10-14% compared to the incumbent PES supplier. Clearly the current switching systems in electricity in NI cannot deliver the degree of competition seen in RoI and this situation must be rectified as soon as possible.

<u>firmus energy is keen to understand how the switching systems in RoI in both gas and electricity could be replicated in Northern Ireland, thus allowing SME and domestic customers to avail of competition as soon as possible.</u>

Issues:
firmus energy recognises that a number of steps have been taken over the last 10–15 years, and particularly over the last 3-4 years, to facilitate competition. However, we believe a detailed review needs to be undertaken, particularly with regard to;

1. **Incumbent regulation**

Natural Gas:
Even with >90% of market share by volume in the IC sector, there are no regulatory controls which prevent the incumbent (Phoenix Supply) from ‘meeting the competition’. This is very different from other comparable markets in GB and the Republic of Ireland where regulatory controls were used to allow competition to flourish in the early years following market opening and where the incumbents were unable to ‘meet the competition’ until significant share loss occurred. Given the Utility Regulator’s stated strategic objective of ensuring that “no party may hold…a large market share in the retail market”, and its indication that this share should not be “more than 40%”, firmus energy is keen to understand the Regulator’s position on the continued lack of Regulatory controls over Phoenix Supply in the large IC sector.

Given our activity in the IC sector in Greater Belfast, we have evidenced a number of issues where Phoenix Supply has used its dominant position to effectively stifle competition. We have evidenced the incumbent matching flexible purchasing arrangements and using their portfolio benefits to selectively cut supply margin to retain Large IC contract business.

We have witnessed the incumbent cutting supply costs/margin in the Medium IC sector to lock down customers prior to an approach from a new entrant as well as using their 90 day contract termination clause to retain customers, i.e. matching a competitor contract offer and switching ‘immediately’.

We believe that the incumbents current customer offers are confusing and opaque, resulting in customers not being able to easily compare offers. This confusion can, and has led to customers remaining with the incumbent due to confusion and lack of understanding of their charges.

To ensure that contract offers are comparable, the market needs regular, complete and freely available meter point information including;

- published peak day capacity information for all customers >25k tpa
- published AQs for all customers > 25k tpa

We have asked for this information at the last GMOG meeting (15th May 2009) and only in recent days has this information been provided.

firmus energy believes that there is a need for regulatory oversight of the incumbent’s commercial offers if competition is to flourish and for the incumbent’s market share to reach an agreed % level. The Utility regulator needs to convey to the market what this level is.

We believe that the incumbent’s contract termination period should be limited to 60 days. For ICE/IPE Contracts, the incumbent should not be allowed to make customer offers during the 60 days “post switching” request. This should be transparent and must not involve (as is the case) the proposing supplier having to contact the incumbent supplier to ‘’see if the customer can switch earlier’’.

If new suppliers are to gain market share, we feel that the incumbent should not be able to lock new entrants out of the market by offering contracts of more than 12 months.

We believe that the incumbent should be required to quote customers using a standard template for all contract offers clearly separating out Transmission, Distribution, Gas costs, Supply costs, other costs (shrinkage fees, Moffat costs etc.) and Supply margin.

Customers can then more accurately compare competitor quotes without fear of 'hidden charges'. Additionally we believe that, given their historic knowledge of their supply costs/margin, the incumbent should be able to quote once to the customer to avoid undercutting competitors "at the last minute" and flexing their portfolio benefits to retain customer volumes.

We also feel that a regulatory review is needed to ensure the incumbent does not sell below a specified margin to retain volume business. To use their existing portfolio benefits in this way is anti-competitive and will result in little market share loss to new entrants.

Electricity:
The regulated tariff should be reviewed, together with the k-factor, to ensure that all domestic suppliers are operating on a level playing field in terms of risk and margin headroom.

The current NIE Energy retail margin, together with the existing k-factor arrangements, does little to encourage new supply entrants.

2. Customer switching systems:

Natural Gas:
The current IC 90 day termination clause does little to encourage customers to switch between suppliers and adds significant risk to the new supplier in terms of backing-out or hedging their gas purchasing commitments on behalf of the new customer.

We also feel that the incumbents IT switching solution is wholly inadequate, given the current maximum of 25 switches per week. On this basis, assuming market switching accounts for 40% of all consumers, it would take all *interested* customers 37 years to switch *once*. Even with Phoenix (Distribution and Supply) recent proposal for 50 switches per week, it would take all *interested* customers 19 years to all switch *once*.

We believe that IT systems need to be in place to enable a minimum of 7,000 customer switches per month, i.e. 80,000 switches per annum. firmus energy believes that the GasMaP system, used in RoI, would facilitate market competition quickly and at best cost and would urge the Regulator to consider this option at the earliest opportunity.

firmus energy is also of the view that our proposal to NIAUR back in 2007 on a 'point-of-sale' switching mechanism using PayPoint should be investigated as soon as possible as a way of facilitating efficient switching within the pay-as-you-go sector. This option could offer real benefits to a small market such as Northern Ireland and ensure that those fuel poor customers, who need it most, can benefit from a quick and effective form of competition.

Electricity market:
Even after a £24m investment in switching systems at NIE T&D, the current IT solution is wholly inadequate to facilitate competition along the lines of that which has been evidenced recently in RoI.

As confirmed directly with NIE T&D, the maximum switches possible using the current IT systems is circa 2000 per month. On this basis, assuming market switching accounts for 40% of all consumers, it would take 12 years for all *interested* customers to switch *once* (assuming the current system can accommodate >50,000 switches in total).

The current date for the realisation of the ‘Enduring Solution’ of March 2012 will de facto stifle domestic competition for the next 3 years.

NIE T&D must implement a system capable of delivering 15-20,000 switches per month as quickly as possible.

The date of March 2012 for the ‘Enduring Solution’ is wholly inadequate. firmus energy, and customers according to NIAUR’s own market research, are ready for retail competition to happen now.

3. Data Transparency:

Natural Gas:
firmus energy considers that meter point/customer profile data should be held centrally, by the distribution company, and be able to be accessed remotely by customers or potential new suppliers through web access or similar (i.e. without direct request to the network operator).

This information should be kept up-to-date in a transparent manner so that all interested suppliers have access to the same information as the incumbent.

Electricity:
To ensure a more open market for customers, lists of customers by sector should be available for all second tier suppliers – or at the very least, NIAUR / Consumer Council should write to all eligible customers advising them of the new suppliers active in the market place.

It would be helpful for NIE T&D to publish usage profiles for sample SME’s (split by commercial sector, e.g. hotels, restaurants, pubs) and domestic users to help new entrants profile consumption and cost data.

Whilst Second Tier suppliers were given access to eligible customer lists in the early years following IC market opening, these customer lists are no longer available to new entrants. This will have the effect of maintaining the existing duopoly in the market and will not enhance competition for large numbers of medium and small commercial businesses.

In summary, firmus energy is extremely concerned that arrangements which can advance competition, as witnessed in both GB and RoI, have not yet been adopted in NI. We continue to be challenged by customers, MLA’s and other public representatives as to why we are not more active in the Electricity and Greater Belfast gas markets and we share the Regulator’s frustration as to the lack of real retail competition progress in Northern Ireland.

To that end, firmus energy welcomes the Authority’s increased focus on driving competition in both the electricity and Greater Belfast gas market and hope that this can be delivered as soon as possible, for the benefit of consumers.