



# Competition in connections – Consultation on ENWL's Competition Notice

## Consultation

**Publication date:** 07 February 2014

**Response deadline:** 21 March 2014

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### Overview:

This consultation seeks views on the development of competition in the Distribution Service Area of Electricity North West Limited (ENWL). It follows the submission to us by ENWL of a 'Competition Notice'<sup>1</sup> on 24 December 2013 in relation to three Relevant Market Segments (RMS)<sup>2</sup> Metered Demand — Low Voltage Work, Distributed Generation — Low Voltage work, and Unmetered Other.

We currently protect the interests of consumers by regulating the margins that Distribution Network Operators can earn from their connections business. We propose to lift price regulation for connection services where ENWL has demonstrated that effective competition exists by satisfying both the Legal Requirements Test and a Competition Test as set out in Part C of Charge Restriction Condition (CRC) 12.<sup>3</sup> We intend to make determinations on whether ENWL has satisfied these tests in April 2014.

In this document we highlight the information we are looking for to help us assess whether effective competition exists in each of the three RMSs covered by ENWL's submission. ENWL's Competition Notice is available on our website as an associated document to this consultation.

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<sup>1</sup> A Competition Notice is a Notice given by the licensee in accordance with Part D of Charge Restriction Condition (CRC) 12.

<sup>2</sup> Defined in Part K of CRC 12 as any of the Relevant Market Segments that are defined in or determined in accordance with Appendix 1.

<sup>3</sup> CRC 12. Licensee's Connection Activities: Margins and the development of competition

## Context

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Our principal objective is to protect the interests of existing and future consumers. We consider that where competition is viable and effective it can protect customer interests better than regulation. Effective competition in the connections market should allow customers to benefit from lower prices, innovation and better service.

In recent years, we have worked closely with the industry to remove barriers and other limitations on the scope for competition in connections. In 2010, we introduced a package of measures to remove regulatory barriers to competition and to provide strong incentives for Distribution Network Operators (DNOs) to facilitate competition.

These measures include -

- providing headroom to new entrants by introducing a four per cent regulated margin that DNOs must 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 (by way of submitting a Competition Notice), and
- an assurance that we will continue to monitor competition in the connections market (we will review the position and consider what action to take if a DNO fails to demonstrate effective competition by 31 December 2013).

To date we have issued decisions on nine Competition Notices – Electricity North West Limited (on 21 November 2011, 10 May 2013 and 23 August 2013), Northern Powergrid (on 26 October 2012), UK Power Networks (on 29 October 2012 and 15 August 2013), Western Power Distribution (on 25 February 2013), Scottish and Southern Energy Power Distribution (on 29 April 2013) and Scottish Power Energy Networks (on 13 December 2013). Details of our previous determinations and of any Competition Notices we are currently considering can be found on our website.<sup>4</sup>

In our previous determinations we have emphasised that we will not lift price regulation until we have sufficient evidence that customers' interests will be protected in its absence. If a DNO does not consider that it can provide evidence of effective competition in the whole of a Relevant Market Segment (RMS) it can propose an alternative market segment.

We have received an application from Electricity North West Ltd. This consultation seeks views on ENWL's application, which relates to three RMSs: Metered Demand — Low Voltage Work, Distributed Generation — Low Voltage work, and Unmetered Other.

This is ENWL's fourth application. Our determinations in this case will be based on the evidence presented in its Competition Notice and responses to this consultation.

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<sup>4</sup> <https://www.ofgem.gov.uk/electricity/distribution-networks/connections-and-competition>

## Associated documents

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ENWL's Competition Notice and decisions on previous Competition Notices

<https://www.ofgem.gov.uk/electricity/distribution-networks/connections-and-competition/competition-connections>

DPCR5 Final Proposals - Incentives and Obligations

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

Special conditions of the Electricity Distribution Licence

<http://www.ofgem.gov.uk/Networks/ElecDist/PriceCtrls/DPCR5/Documents1/CRCs%20master%20merged.pdf>

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## Executive Summary

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Electricity North West Ltd (ENWL) is applying for price regulation to be lifted in three RMSs: Metered Demand — Low Voltage Work, Distributed Generation — Low Voltage Work, and Unmetered Other.

We are seeking views and evidence by 21 March 2014 on whether we can have confidence in ENWL being constrained by pressures from actual or potential competitors if price regulation is lifted in each of the relevant RMSs.

We have four months from the date ENWL submitted its application, 24 December 2013, to determine whether to lift price regulation.

### Background

We have been working to facilitate competition in electricity connections since 2000. Unlike the replacement, reinforcement and maintenance of the existing network, some connection services are contestable. This means that new entrants to the market can compete with Distribution Network Operators (DNOs) operating in their regions to give customers a real choice over their connection provider and an opportunity to shop around to get good service and value for money. We would expect competition to deliver benefits that are more difficult to achieve through regulation, such as innovation in the type of services on offer, a focus from providers on meeting customer needs and a choice for customers.

In general, however, we have been disappointed with the pace at which competition in the electricity connections market has developed. For this reason, at the last electricity distribution price control review (DPCR5), we revised regulatory arrangements to further facilitate competition. Previously, DNOs were prevented from earning a margin on connection activities. DNOs must now earn a margin of four per cent on contestable connection services in those relevant market segments where competition is considered viable. This is intended to create headroom to allow others to compete against the DNO. In addition, since the start of DPCR5 (April 2010), DNOs have been able to submit Competition Notices to request that price regulation be lifted in the RMSs where they can show that effective competition exists.<sup>5</sup>

### Considerations in determining whether to lift price regulation

In determining whether to lift price regulation, we will consider 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. Furthermore, our previous decisions on DNOs' Competition Notices have demonstrated that we will not lift price regulation until we have sufficient evidence that customers' interests, in the whole of a RMS, will be

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<sup>5</sup> 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 may subsequently be referred to the Competition and Markets Authority.

Competition in connections — Consultation on ENWL’s Competition Notice protected in its absence. We will conduct a separate analysis of each of the RMSs covered by ENWL’s application.

One important indicator of whether competition is effective is ENWL’s share of work carried out. Another is the number of alternative providers active in each market segment. ENWL’s application suggests that it carries out a large share of connection projects in some RMSs where it considers that there is effective competition. While we will take into account ENWL’s share of work in each RMS in assessing whether effective competition exists, in our view it should not be considered in isolation as it can be an imperfect indicator of the effectiveness of competition. For example, a DNO may retain a high 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 that the DNO charges and/or encouraging it to innovate and improve service.

Equally, continued regulation in contestable services can have unintended consequences and stifle the scope for customers to realise the benefits, such as innovation, that competition can bring. For this reason, an approach that looks narrowly at market shares and retains price regulation until predefined 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, we will consider a range of criteria in assessing whether effective competition exists. We will make our decision having considered the evidence in ENWL’s Competition Notice and in responses to this consultation provided by interested parties.

We would like to hear in particular from parties who purchase contestable connection services in ENWL’s Distribution Service Area (DSA) in one or more the RMSs covered by ENWL’s submission. We would like to understand whether customers 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 from its competitors).

We also seek the views of those companies competing with ENWL or those who have done so, or who have considered doing so in the past. We would like to understand whether there are barriers to them entering or growing their market share in the RMSs covered by ENWL’s application. 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.

# 1. ENWL's Competition Notice

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## Chapter Summary

This chapter describes ENWL's Competition Notice, the process we will follow in considering whether the Legal Requirements Test and the Competition Test have been met and the structure of this consultation.

1.1. On 24 December 2013 ENWL submitted a Competition Notice applying to have price regulation lifted on competitive connection activities in three RMSs — Metered Demand — Low Voltage Work, Distributed Generation — Low Voltage Work, and Unmetered Other — as set out in CRC 12 of the Electricity Distribution Licence.<sup>6</sup>

1.2. CRC 12 and our DPCR5 Final Proposals set out the process we must follow in assessing the Competition Notice submitted by ENWL. We must determine whether the Legal Requirements Test and the Competition Test (set out in CRC 12) have been met for the RMSs applied for.<sup>7</sup> We must make these determinations within four months of receiving ENWL's Competition Notice. CRC 12 requires us to consult with parties that we believe have an interest prior to making our determinations.

1.3. Our DPCR5 Final Proposals set out key issues that DNOs should consider in making their case. In addition, our previous decisions on DNOs' Competition Notices have demonstrated that we will not lift price regulation until we have seen sufficient evidence that customers' interests will be protected in its absence. The key issues set out in DPCR5 form the basis for ENWL's Competition Notice. These 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: 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 new entrant providers; and what the DNO is 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

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<sup>6</sup> Appendix 4 sets out the details of all nine RMSs.

<sup>7</sup> The Legal Requirement Test and the Competition Test are set out in Appendix 3.



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- 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.

1.4. We intend to publish our decision on the Competition Notice submitted by ENWL, with details of our determinations in respect of the RMSs covered by the Notice, in April 2014.

### **Consultation responses**

1.5. In making our determinations we will consider responses to this consultation, amongst other relevant information.

1.6. We are required to make separate determinations for each of the RMSs covered by ENWL’s application.

1.7. We ask respondents to this consultation, wherever possible, to submit their responses using the template in Appendix 1 of this document. In any case, we ask them to clearly set out to which RMS each section of their response relates.

1.8. Unless consultation responses are marked confidential they may be posted on our 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.

1.9. Under the terms of the licence, we are required to make a determination within four months of receiving a Competition Notice from the licensee. To ensure that we fulfil these obligations the deadline by which consultation responses must be submitted to us is 21 March 2014. We consider that this gives stakeholders sufficient time to consider documents and prepare responses.

### **Structure of this document**

1.10. While interested parties are invited to respond to all of the questions posed in this consultation, we would particularly like to invite -

- Customers to consider the issues discussed in Chapter 2 (Customers’ awareness of and ability to choose competitive alternatives) and the document summary at Chapter 6.
- Existing and potential competitors to consider the issues discussed in Chapter 3 (The potential for further competition) and the document summary at Chapter 6.

1.11. Chapter 4 presents a summary of ENWL’s assessment of competitive activity and we seek views on the data provided in ENWL’s Competition Notice.

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1.12. Chapter 5 describes ENWL's current position against the Legal Requirements Test.

1.13. Appendix 1 provides a template to assist you in providing responses to the consultation document.

1.14. Appendix 2 gives an overview of the electricity connections market, our decision to introduce a regulated margin and the potential for price regulation to be lifted. It also discusses what we will consider in determining whether the Competition Test has been passed.

1.15. Appendix 3 outlines the Legal Requirements and Competition Test

1.16. Appendix 4 defines each of the nine RMSs.

1.17. Appendix 5 contains a glossary.

1.18. Appendix 6 contains a feedback questionnaire about this consultation.

1.19. We encourage all interested parties to read the documents containing ENWL's Competition Notice which is available on our website as associated documents to this consultation.

1.20. We intend to publish our decision on the Competition Notice submitted by ENWL with details of our determinations in April 2014.

## 2. Customers' awareness of and ability to choose competitive alternatives

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### Chapter Summary

This chapter seeks customers' views on their 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 provide the service and price they expect to receive.

**When considering your responses to these questions, please consider your experiences, the actions that ENWL has undertaken and the actions that you consider it could reasonably undertake.**

**Question 1:** Are customers aware that competitive alternatives exist?

**Question 2:** Do customers have effective choice, ie are they easily able to seek quotations from competitive alternatives?

**Question 3:** Does ENWL take appropriate measures to ensure that customers are aware of competitive alternatives?

**Question 4:** Are quotations provided by ENWL clear and transparent? Do they enable customers to make informed decisions of whether to accept or reject a quote?

**Question 5:** Have customers benefitted from competition? 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 connections providers. In determining whether this choice exists, in addition to the number of competitors active in each of the RMSs, 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 respect of the two metered RMSs covered by their Notice, namely Demand LV and DG LV, ENWL provides data on activity by competitors, in each financial year from 2010-11 to 2013-14 (part).

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2.3. ENWL reports on the number of parties that received an ENWL quote, an Independent Connection Provider (ICP) quote and an Independent Distribution Network Operator (IDNO) in the relevant period. It defines these terms as follows -

- An ENWL quote is one issued by ENWL to carry out all the works, contestable and non-contestable, associated with a new connection. In this document, we also refer to this type of quote as an “all works” quote.
- An ICP quotation is one issued by ENWL to carry out non-contestable work only and where an ICP will carry out the contestable work.
- An IDNO quotation is one issued by ENWL to carry out non-contestable work only where an IDNO will adopt the assets and where the contestable work is carried out by an ICP or IDNO.

2.4. In this document, we also refer to ICP quotations and IDNO quotations jointly as Point of Connection (POC) quotations.

2.5. ENWL specifies that if the same party has asked ENWL for an ICP quote and for an IDNO quote then the two quotes will be counted in each of the categories.

2.6. ENWL’s analysis on the level of competitive activity only considers those connection offers where there is some contestable work that can be carried out by a third party.

2.7. Table 1 sets out the number of parties that received a Point of Connection quote in the Demand LV and the DG LV RMSs.

**Table 1: Demand LV - Number of National Electricity Registration Scheme (NERS) accredited parties that have received Point of Connection quotes**

<b>RMS</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14 (part)</b>
Demand LV	44	43	52	42
Distributed Generation LV	1	2	0	4

Source: ENWL Competition Notice 24 December 2013

2.8. With respect to the Unmetered Other RMS, ENWL reports that five of the twelve participants at an ENWL seminar in November 2013, said they operated in this market segment.

2.9. We would expect customers in each of the RMSs for which ENWL is seeking to pass the Competition Test to face an effective choice of competitive providers when they are seeking a connection.

2.10. We would like to understand if this is the experience of customers in these RMSs. Have customers been able to obtain quotes from alternative providers? We

Competition in connections — Consultation on ENWL’s Competition Notice are also interested in whether customers are confident that they have a real choice between connections providers.

### **Promoting awareness of competition**

- 2.11. ENWL describes a number of ways in which it makes potential customers aware of the possibility of procuring alternative providers to carry out the contestable elements of a project.
- 2.12. ENWL’s website includes a page with a heading “Competition in connections”. This provides information on the distinction between contestable and non-contestable work — listing examples of work falling under each heading — and describes the importance of competition in connections and the need for ENWL to provide quotes showing the split between contestable and non-contestable work.<sup>8</sup> The webpage also provides a link to the Lloyd’s Register page listing accredited alternative providers, and to an Ofgem web page that lists the IDNOs.
- 2.13. ENWL state that, in the quotes issued, it makes clear that customers may choose an independent contractor to carry out any contestable elements of the work.
- 2.14. ENWL describes in its Competition Notice various initiatives (eg seminars, meetings and working groups) that it has carried out to engage with customers to explain competition in connections. It reports that at a seminar held in November 2013, 11 of the 12 attendees agreed with the statement that “customers are aware that competitive alternatives exist”, and that all 12 agreed with the statement that “ENWL takes appropriate measures to ensure that customers are aware of the competitive alternatives available to them.”
- 2.15. We seek customers’ views on whether they consider that ENWL takes appropriate measures to make customers aware of the competitive alternatives available to them — for example, in the information they make available to customers at the time of seeking a quote. When responding, please consider your experiences, the actions that ENWL has undertaken and the actions that you consider it could reasonably undertake.

### **Transparency of pricing and giving customers the ability to choose**

- 2.16. To be able to make an effective choice, we consider that customers should be able to compare the prices that will be charged by the incumbent DNO with those that may be charged by an alternative provider.
- 2.17. ENWL has a single standard application form for all demand customers, allowing customers to use a single form to apply for an all works and for a POC quote.

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<sup>8</sup> <http://www.enwl.co.uk/our-services/connection-help-documentation/competition-in-connections>, accessed on 21 January 2014.

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2.18. ENWL states that it provides a split between contestable and non-contestable charges on all its quotes. It also states that for both contestable and non-contestable charges, it gives a detailed breakdown of costs on all quotes that are above £10,000, and says that even smaller quotes "receive a good level of breakdown". The table on page 28 of ENWL's Notice provides an example of the breakdown provided in a low value quotation.

2.19. The figures reported in Section 8 of the Competition Notice show that the average value of quotes issued in the Demand LV RMS is close to £10,000, suggesting that a significant number of the quotes for work in that RMS will be for values below £10,000. We are interested in understanding whether the level of detail given in those quotes with a value below £10,000 is sufficient to help customers choose amongst alternative providers.

2.20. As mentioned earlier, ENWL states that it includes in its all works quotes a statement informing the customer that if the quote includes contestable work then the customer can appoint their own contractor to carry out that part of the work..

2.21. ENWL states that, from July 2012, it extended the validity period of its quotes from 90 to 180 days in response to customer requests. ENWL believes that the 180 day period allows customers time to choose how to proceed in a connection process. This length of time applies to all quotes, irrespective of whether they are POC quotes or all works. The validity period of an outstanding quotation may be shorter if a new quotation subsequently issued by ENWL interacts with the outstanding quotation. Where such interactivity is identified by ENWL, the acceptance of the new quotation will trigger the withdrawal by ENWL of all unaccepted quotations that interact with the accepted quotation.

2.22. For both metered demand RMSs covered by its Notice, ENWL allows customers that have received an all works quote to accept just the non-contestable elements of that quote. This gives customers the opportunity to seek alternative prices from ICPs for the contestable work without the customers or the ICP having to re-apply separately. ENWL first developed this approach in the HV segment, and extended it to the Distributed Generation — Low Voltage Work RMS in June 2013, and to the Demand Low Voltage RMS in October 2013.

2.23. We seek the views of customers and competitors on points relating to the transparency of pricing and to customers' ability to choose. In particular -

- Are quotes provided by ENWL for connections clear and transparent?
- Do ENWL's quotes enable customers to make an informed decision to accept or reject a quote?
- Does the 180-day validity period on ENWL quotes allow customers to consider competitive alternatives?

## **Benefits**

2.24. In addition, we are interested in whether customers consider that they have benefitted from competition. Such a benefit could be seen, for example, either

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in improvements in ENWL’s services or charges in the face of competition or  
by new entrants providing a superior level of service and/or a better price.

## 3. The potential for further competition

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### Chapter Summary

This chapter seeks views of existing and potential competitors on the potential for future competitive activity in the three relevant RMSs (Demand LV, DG LV and Unmetered Other). 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 the RMS.

### Question box

**When considering your responses to these questions, please consider your experiences, the actions that ENWL has undertaken and the actions that you consider it could reasonably undertake.**

**Question 1:** Does the level of competitive activity in the RMS show that there is the potential for further competition to develop?

**Question 2:** Consider the organisational structure of ENWL's business and its procedures and processes -

- ➔ how do they compare to those you encounter elsewhere in the gas and electricity markets or other industries? Do they reflect best practice?
- ➔ do they enable competitors to compete with the timescales for connection (from quote to energisation) offered by ENWL? Or do they offer ENWL any inherent advantage over its competitors or prevent existing competitors from competing with them effectively?
- ➔ do they assist, obstruct or delay connections providers entering the RMS?

**Question 3:** Are the non-contestable charges levied by ENWL for statutory connections in the RMS consistent with those levied for competitive quotations? Are they easily comparable with competitive quotations? Do the differences in charges between a POC quote and the non-contestable elements of an all works quote act as a barrier to competition?

**Question 4:** What factors are key influences on the development of competition in the RMS? In particular, if you are an existing/potential competitor -

- ➔ what is the potential for competitors to enter the Demand LV, DG LV and Unmetered Other RMS, or grow their share of the RMS if they already operate in it?
- ➔ are there any types of connection in the RMS, or geographic locations in ENWL's DSA, that by their nature, are not attractive to competition? Please explain why in your response.

3.1. While we will consider current levels of competition when determining whether to lift price regulation in each of the RMSs, it will only be considered alongside the potential for further competition to develop.

3.2. In this chapter we ask for competitors' views on the potential for further competition to develop in each of the three relevant RMSs. In particular, we ask for views on the ease with which competitors can enter and compete, whether there are



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barriers to competition and we ask about ENWL’s efforts to open up non-contestable activities to competition. We also invite views on how competition might develop in the future.

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

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

3.3. We consider that the ease with which competitors can enter the market and the number of competitors leaving the market are indicators of the potential for further competition to develop.

3.4. In its Competition Notice ENWL provides details of the number of competitors active since 2010-11. A summary of the information provided on competitors requesting and accepting quotations can be found in Chapter 4 of this document. ENWL’s Notice also provides data, for the Demand LV RMS (on page 36 of its Notice) and the DG LV RMS (on page 41 of its Notice), on the number of new parties entering the market in every year from 2010–11 onwards.

3.5. We ask existing/potential competitors whether they consider that the number of active competitors in each RMS in itself shows that there is the potential for further competition to develop.

### **Barriers to effective competition**

3.6. We consider that it is important to look at whether barriers to competition exist in the market that -

- prevent competitors from competing effectively (for example, barriers that may make it difficult for competitors to compete with ENWL in terms of service or price), or
- prevent further competition (for example, barriers that may make entering the RMS unattractive, or barriers that obstruct or delay entry to the RMS).

3.7. We are not only considering potential barriers that are within ENWL’s control to remove, but also natural barriers or regulatory barriers that may obstruct competition from developing further.

3.8. ENWL’s Competition Notice sets out the actions that it has taken to address potential barriers to competition that had been raised by respondents to our consultation on ENWL’s first Competition Notice submitted on 22 July 2011, and that we had raised in our “reasons behind our decision” document of 21 November 2011, also relating to that first ENWL first Competition Notice. ENWL also goes through a set of potential barriers that have been identified in work developed by the Competitive Networks Association (CNA).

3.9. In our determinations on ENWL’s previous Competition Notices we reviewed evidence on barriers to competition in ENWL’s area in a number of RMSs. In this

Competition in connections — Consultation on ENWL’s Competition Notice consultation, we are especially interested to hear views on potential barriers to competition that may have a particular impact on any of the three RMSs covered by ENWL’s current Notice. We invite views too on the effectiveness of the measures taken by ENWL to address some of the potential barriers, as described in its Competition Notice.

#### *Availability of guidance and information for ICPs/IDNOs*

3.10. As identified by the CNA, an alternative provider may be impeded from competing with a DNO if the DNO makes it difficult for the provider to access information that it requires to develop and deliver its own offer. This information can refer for example to the DNO’s design policy documents, to its codes of practices, method statements or to material specifications.

3.11. ENWL describes in its Competition Notice the information available to alternative providers from ENWL’s website or from its electronic public library. This includes information on whom to contact to discuss a new job or to submit a new application; information on relevant codes of practice; and information on design policy for industrial supplies.

3.12. ENWL’s electronic library is password protected. ENWL grants access to NERS-accredited ICPs. In response to a request from a consultant, ENWL reviewed its policy and now makes this information available to other interested parties without NERS accreditation. The library has a notification screen alerting users to policy changes. ENWL provides CDs of their asset data records free of charge. It states that it is progressively making this information available online.

3.13. ENWL reports in its Notice that all twelve delegates at a November 2013 seminar held by ENWL on competition in connections, said they agreed with the statement that “ENWL’s process and procedures allow competitors to compete effectively including access to network data and policy documents. Of the 12 delegates all but one operated in the Metered Demand – Low Voltage Work RMS, and most operated in multiple RMSs..

#### *Service and response times*

3.14. Both the ECSG and the CNA have identified the time taken by DNOs in general as a potential barrier to competition. More specifically, they raised the concern that DNOs may not take the same level of care in dealing with activities that lie outside the scope of their licence obligations on guaranteed service standards (SLC15).

3.15. We recognise that unduly long timeframes to handle requests by alternative providers might hamper the ability of alternative providers to compete with a DNO. Uncertainty about these timeframes might also increase the risk — in the eyes of the final customer — of using an alternative provider.

3.16. In the context of monitoring activities falling within the guaranteed service standards (SLC15), ENWL states that, as part of its compliance assurance approach, it carries out “quarterly management control checks to ensure that there is no undue discrimination in the provision of non-contestable services to ICPs”.

## Competition in connections — Consultation on ENWL's Competition Notice

3.17. ENWL states that the average time it took in the "quarter 2 of 2013–14" to issue quotations in the Demand LV and Generation LV RMSs was "less than 11 working days compared to the SLC15 target of 15 working days". ENWL also reports on how it performed against several SLC15 standards in 2012-13 -

- Provision of LV Demand quotations: 99.6 per cent
- Provision of LV Generation quotations: 100 per cent
- Response to design approval for LV and HV submissions: 98.6 per cent
- Final connections at LV: 99.0 per cent

### *Contractual arrangements for the adoption of assets built by ICPs*

3.18. The ECSG identified that the arrangements put in place by DNOs in relation to the adoption of assets built by ICPs is a potential barrier to competition. In particular, the ECSG raised the issue of security arrangements (bonds) to protect the DNO against any liability in case there is a fault in the adopted network. This is not specific to ENWL.

3.19. ENWL states that its approach to adoption agreements includes provision for ENWL to "request a guarantee or other form of security if [it is] not satisfied with the credit rating of an ICP." ENWL adds that it has "only used this provision once and a Parent Company Guarantee was used. [It has] never required a bond from an ICP."

3.20. In our 21 November 2011 determinations on ENWL's first Competition Notice we raised the point made by some respondents concerning the tripartite agreements required by ENWL and the potential impact these might have on a customer's willingness to use competitive alternatives. In its Competition Notice, ENWL states that it has now developed bilateral adoption agreements and that these have been used on a small number of occasions in 2012.

### *Inspection and monitoring of assets built by ICPs*

3.21. The ECSG has raised the issue of inspections and monitoring of assets built by ICPs as a potential barrier to competition. In particular, it questioned the proportionality of the cost and time taken by DNOs to inspect these assets.

3.22. In its Competition Notice, ENWL describes its approach to inspection and monitoring. Its regime has three levels of inspection and "all the main third parties who are active in [the ENWL] area are on the third and lowest level of inspection".

3.23. ENWL states that it applies the same inspection and monitoring policy consistently to connections work carried out by ICPs and to connections work carried out by ENWL's staff or by its contractors.

## Competition in connections — Consultation on ENWL's Competition Notice

3.24. ENWL has developed an IT system to allow ICPs online access to audit results, giving ICPs real time information of audit defects so that rectification can take place without putting energisation dates at risk.

3.25. In its Competition Notice, ENWL reports that it received feedback from stakeholders during 2012 that "whilst they supported the three levels of inspection they considered some of our thresholds were still onerous.". ENWL highlights the comment that there were certain activities that had 100 per cent inspection levels, something they stakeholders thought unnecessary if they had demonstrated a high quality track record. Following this feedback, ENWL states that it has reviewed its audit and inspection regime and that this has received favourable feedback from ICPs and from an industry working group on Inspection and Monitoring. ENWL told us that the revisions to the regime relate to reducing the audit frequency for ICPs who have consistently performed well in ENWL's audits. ENWL is also proposing to change its policy so that it will charge for audits in arrears rather than up front as is currently the case. ENWL states it intends to submit a modification proposal to Ofgem to allow it to introduce the changes from April 2014.

### *Arrangements for obtaining land rights*

3.26. The CNA has identified the process of obtaining land rights when an ICP or IDNO carries out the contestable work as a potential barrier to competition. According to the CNA, DNOs can be slow to initiate the process for securing leases, easements etc and slow to progress them once begun. This can frustrate competitors as DNOs require all the legal agreements to be in place before they will energise the new connection.

3.27. ENWL states that it uses standard agreements for easements and land transfers "to speed the process and minimise costs." ENWL also states that it developed alternative agreements for the securing of easements and wayleaves with one IDNO, GTC, following requests from that IDNO to consider an approach it had developed with another DNO. ENWL subsequently told us that this approach is available to all IDNOs in its area.

### *Consistency of charges*

3.28. A potential barrier to competition will arise if there are differences between POC quotes and all works quotes in the charges set by the DNO for the same non-contestable work. This may place an alternative provider at an undue disadvantage when competing with the DNO for work.

3.29. ENWL states that it is consistent in its pricing between all works quotes and POC quotes. For a given project, the non-contestable charges would be identical in both. ENWL notes in particular that this consistency applies in particular to its "inspection and monitoring charges" where it applies the same charges irrespective of whether these charges are in the context of an all works quote — and therefore where it is ENWL's work which is being inspected — or in the context of POC quotes where the work is carried out by an alternative provider. This is provided that the relevant ICP is at the same (lowest) level of inspection regime that is applied to ENWL's own work. ENWL states that most ICPs are at that level.

## Competition in connections — Consultation on ENWL’s Competition Notice

3.30. There will be differences in the charges set out in a POC quote and in the non-contestable elements of an all works quote to reflect differences in the two processes. ENWL describes these as “transactional charges associated with Competition in Connections such as design approval and issuing adoption agreements”. ENWL subsequently informed us that these transactional charges only apply to the two metered demand RMSs covered by its Notice. In the case of the Unmetered Other RMS, “if an ICP is carrying out the work there is a £5 per column charge instead”. We seek respondents’ views on the extent to which they consider the differences in charges between a POC quote and the non-contestable elements of an all works quote acts as a barrier to competition in the three RMSs covered by ENWL’s application.

### *Other potential barriers*

3.31. The potential barriers highlighted by the CNA and the ECSG include others that we have not discussed above, including -

- developing ongoing relationships (DNOs are often seen to be poor at “soft skills”, eg communication, cooperativeness, relationship with competitors), and
- dispute resolution (competitors raised concerns that the length of time taken to resolve disputes can leave them unable to compete effectively).

3.32. We seek respondents’ views on the extent to which they consider the procedures and processes ENWL has put in place and identified in its Competition Notice to be sufficient to enable others to compete effectively. In particular, we seek competitors’ views on -

- Does ENWL enable alternative connections providers to compete with its own connections timescales (from quote to energisation)? Or does ENWL have any inherent advantage or prevent existing competitors from competing effectively?
- How does ENWL assist, obstruct or delay connections providers entering any of the three RMSs covered by its application?
- Do any of the potential barriers to the development of competition that have previously been identified still exist in the ENWL Distributed Service Area?

## **The future growth of competition**

3.33. We are interested in whether existing or potential competitors intend to expand or start their business in the ‘Metered Demand — Low Voltage Work’, ‘Distributed Generation — Low Voltage work’ or ‘Unmetered Other’ RMSs in ENWL’s DSA. We are also interested in the factors that competitors take into consideration in deciding whether to compete with ENWL.

## Competition in connections — Consultation on ENWL's Competition Notice

3.34. We note that you may consider this information to be confidential. If you do, please provide it in a separate annex to your response and clearly mark it as confidential.

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

3.35. Further to the potential barriers to competition discussed earlier in this chapter, we note that the potential for competition to develop in the three RMSs covered by ENWL's application may be influenced by a number of factors, for example the level of contestable service offered by ENWL to its customers, economic conditions and the level of margin charged by ENWL.

3.36. We seek views of existing and potential competitors on what factors they consider are key influences on the development of competition in those three RMSs in ENWL's DSA.

3.37. We also seek the views of existing and potential competitors in ENWL's area on the potential for them to enter, or grow their business in, the three segments within the next five years.

3.38. We also seek existing and potential competitors' views as to whether there are any types of connection in the RMS, or geographic locations in ENWL DSA, that, by their nature, are not attractive to competition. If you consider some connections/areas are not attractive to competition, why is that the case?

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

3.39. Connections works are split between works that are contestable (competitive) and those that are non-contestable (can only be completed by the DNO).

3.40. In our December 2011 consultation on expanding the scope of contestable activities we stated our belief that opening up non-contestable activities to competitors may provide further opportunities and incentives for competition to develop in the connections market. This is because it reduces competitors' reliance on DNOs to provide essential services and it increases the scope of works for which competitors can compete.

3.41. We consider that DNOs should engage with the industry to consider where it is possible to further extend contestability.

3.42. ENWL reports on its efforts to expand the scope of contestable work –

- ENWL states that since 2012 it allows "suitably accredited third parties to make live low voltage connections to [ENWL's] existing network and carry out the high voltage jointing work associated with connections."
- Determining the point of connection is currently a non-contestable activity. ENWL states that it has completed trials with three ICPs on determining their own point of connection with mixed success. ENWL has started a new trial where an ICP is also to determine the point of connection, build it to a standard design and self

Competition in connections — Consultation on ENWL’s Competition Notice connect. ENWL states that this covers “250 applications per month for demand connections of up to 5kW”. In respect of that trial, ENWL states that it carries out “a design verification post energisation rather than add any delay to the ICP’s process.”

- With regard to unmetered work in ENWL’s area, all underground unmetered work is contestable, and non-contestable work is limited to new overhead connections to existing network. ENWL states it “would be happy to consider extending contestability to overhead connections if there is sufficient market appetite”.
- ENWL report that its processes and procedures have allowed a consortium of Local Authorities to establish a framework contract for one or more ICPs to provide street lighting services to them.

3.43. We seek views on ENWL’s activities to open up non-contestable activities to competition. In particular, we seek views on how ENWL engages 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.

3.44. We ask existing and potential competitors whether they consider the extension of contestability is likely to stimulate further competition in the ‘Metered Demand — Low Voltage Work’, ‘Distributed Generation — Low Voltage work’ or ‘Unmetered Other’ RMSs in ENWL’s DSA.

## 4. ENWL's assessment of existing competitive activity

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### Chapter Summary

This chapter presents a summary of the information provided by ENWL to support its assessment of existing competitive activity in the Demand LV, DG LV and Unmetered Other RMSs and seeks views from interested parties.

### Question Box

**Question 1:** Do you agree with the methods used by ENWL to assess the level of competition in the Demand LV, DG LV and Unmetered Other RMSs? In particular, do you consider that the data provided gives a clear indication of the current level of competitive activity in each RMS?

**Question 2:** Do you consider that competitive activity is at a level that in itself indicates that effective competition exists? Do you consider that the coverage of existing competitive activity extends across each of the three relevant RMSs?

4.1. In this chapter, we provide a summary of the information provided by ENWL in its Competition Notice. We are seeking views on this information and on the level of competitive activity in each RMS.

4.2. ENWL's Competition Notice contains data on the number of quotes and on estimated value of the contestable work in the projects related to those quotes. It provides this information for quotes issued as well for quotes accepted.

4.3. ENWL reports data for 2010-11, 2011-12, 2012-13 and for the first six months of 2013-14 (until September 2013).

4.4. We discussed in Section 2 that the data reported by ENWL in its Notice distinguishes between three types of quotes: ENWL quotes, ICP quotes and IDNO quotes. ENWL also reports information on quotes issued to and accepted by parties that are not NERS accredited. These refer to instances where the recipient of a quote is a party who is not an accredited ICP and who will provide ENWL's POC quote and receive competitive tenders from a selection of ICPs to carry out the contestable elements of the work. In the tables below, and for the cases where ENWL provides the data, we identify separately the number and value of quotes issued to and accepted by NERS accredited parties, and by non-NERS accredited parties.

4.5. We present a summary of the data put forward by ENWL, taking each RMS in turn.

### Metered Demand — Low Voltage Work RMS



4.6. Table 2 sets out the data on the level of competitive activity in the Metered Demand — Low Voltage Work RMS.

**Table 2 Existing competitive activity — Metered Demand — Low Voltage Work**

	2010-11	2011-12	2012-13	2013-14 (part)
<b>Number of parties receiving POC quotes</b>				
NERS accredited	44	43	52	42
Non- NERS accredited	22	10	11	9
<b>Number of parties accepting POC quotes</b>				
NERS accredited	27	27	33	23
Non- NERS accredited	6	3	5	3
<b>Quotes issued</b>				
Number and avg. value of POC quotes issued	812 (£12,205)	825 (£11,270)	1,013 (£13,236)	579 (£8,698)
Number and avg. value of ENWL quotes issued	1,099 (£12,141)	1,001 (£12,480)	885 (£15,781)	515 (£11,395)
<b>Quotes accepted</b>				
Number and avg. value of POC quotes accepted	150 (£11,739)	164 (£11,665)	234 (£12,596)	94 (£9,274)
Number and avg. value of ENWL quotes accepted	470 (£8,435)	419 (£8,760)	328 (£8,194)	188 (£7,328)
<b>ENWL’s share of RMS</b>				
By number of accepted quotes	76%	72%	58%	67%
By value of accepted quotes	69%	66%	48%	61%

Source: ENWL Competition Notice 24 December 2013 and accompanying data files.

4.7. The data submitted by ENWL show that, for 2012-13, two parties accounted for around 40 per cent of the value of the ICP and IDNO quotes issued, and for around 50 per cent of the value of those that were accepted.

4.8. ENWL also provide data on the number and value of quotes issued and accepted, broken down by load ranges. This is shown in the table below for 2012-13.

**Table 3 Existing competitive activity — Metered Demand — Low Voltage Work, 2012-13**

	<20kVA	<60kVA	<100kVA	<500 kVA	>500kVA
<b>Quotes issued</b>					
Number and avg. value of POC quotes issued	317 (£15,394)	352 (£14,517)	169 (£5,803)	171 (£7,669)	4 (£281,523)
Number and avg. value of ENWL quotes issued	266 (£14,120)	108 (£27,399)	186 (£16,859)	310 (£10,000)	15 (£67,718)
<b>Quotes accepted</b>					
Number and avg. value of POC quotes accepted	93 (£13,656)	87 (£14,929)	30 (£5,724)	25 (£8,446)	0 (-)
Number and avg. value of ENWL quotes accepted	97 (£9,869)	28 (£11,197)	69 (£6,310)	133 (£7,347)	0 (-)
<b>ENWL’s share of RMS</b>					
By number of accepted quotes	51%	24%	70%	84%	-
By value of accepted quotes	43%	19%	72%	82%	-

Source: ENWL Competition Notice 24 December 2013 and accompanying data files.

### Distributed Generation — Low Voltage Work RMS

4.9. ENWL states that the majority of connection offers to final customers in the Distributed Generation — Low Voltage Work RMS are for nil value and/or only contain non-contestable work. Some connection quotes do contain contestable elements and some quotes are issued to ICPs. The data reported in this chapter for this RMS relate to this type of quotes. Connection offers that did not include any contestable work are excluded from the analysis.

**Table 4 Existing competitive activity — Distributed Generation — Low Voltage work**

	2010-11	2011-12	2012-13	2013-14 (part)
<b>Active competitors</b>				
NERS accredited parties receiving POC quotes	1	2	0	4
NERS accredited parties accepting POC quotes	0	1	0	1
<b>Quotes issued</b>				
Number and avg. value of POC quotes issued	6 (£3,776)	3 (£12,066)	0 N/A	12 £15,798)
Number and avg. value of ENWL quotes issued	5 (£28,174)	13 (£4,759)	35 (£9,666)	11 (£41,095)
<b>Quotes accepted</b>				
Number and avg. value of POC quotes accepted	1 (£2,448)	1 (£1,755)	0 N/A	3 (£5,060)
Number and avg. value of ENWL quotes accepted	2 (£2,704)	5 (£9,477)	13 (£4,551)	5 (£8,017)
<b>ENWL’s share of RMS</b>				
By number of accepted quotes	67%	83%	100%	63%
By value of accepted quotes	69%	96%	100%	73%

Source: ENWL Competition Notice 24 December 2013 and accompanying data files.

4.10. For the Distributed Generation LV RMS, ENWL’s Notice did not break down the figures for the number of parties receiving or accepting POC quotes between those that are NERS accredited and those that are not. However, ENWL does state in the Notice that, over the whole period covered by the data, “in three cases, non NERS

Competition in connections — Consultation on ENWL’s Competition Notice accredited customers accepted ICP quotes but later decided not to progress the work with an ICP and Electricity North West carried out the work.” The figures shown in the table above relating to the number of quotes accepted are based on the final provider of the work.

### Unmetered Other

4.11. ENWL states that there are five active participants in the Unmetered Other segment, based on the responses of ICPs at a seminar held in November 2013.

4.12. In its Notice, ENWL reports the number of connections carried out by ICPs and by ENWL in this RMS. ENWL states that it excludes from this unmetered connections that have been carried out by ICPs as part of a metered connections development, and all unmetered activity carried out on IDNO sites. ENWL presents data for 2011-12 and for 2012-13. This is show below.

**Table 5 Existing competitive activity — Unmetered Other**

	2011-12	2012-13
<b>Number of connections</b>		
ICPs	26	81
ENWL	1,548	1,301
<b>RMS share by number of connections</b>		
ICP	2%	6%
ENWL	98%	94%

Source: ENWL Competition Notice 24 December 2013.

4.13. ENWL’s also reports on the number of connections across all unmetered segments for 2012-13; this covers three RMS: Unmetered Local Authority, Unmetered PFI and Unmetered Other. Across all unmetered segments, ENWL completed 81 per cent of the connections in 2012-13. ENWL states that “as our processes and procedures for unmetered apply equally to [the Unmetered Other RMS] as to the other unmetered segments (Local Authority and PFI which have passed the Competition test) we do not believe there are any barriers to competition.”

4.14. ENWL includes in its Notice data on the relative size of customers of the Unmetered Other segment. It reports that “in 2012-13 the top six customers accounted for 60 per cent of the market and all had programmes of work greater than 50 units. The top 14 customers account for 80 per cent of the market. Only around 10 per cent of the market is made up of customers with less than 10 units”. ENWL also notes that three quarters of the customers receiving a quote in the Unmetered Other segment also received a quote relating to another market segment.

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

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### Chapter Summary

This chapter contains our assessment of the position of ENWL against the Legal Requirements Test.

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

### The Legal Requirements Test

- 3.2. 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 any of the five strands detailed below.
  - 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)
  - The Competition Act 1998.

### ENWL's current position

- 3.3. For the purposes of this assessment of ENWL's Competition Notice, submitted on 24 December 2013, the relevant regulatory year is 2013-14 which runs from 1 April 2013 to 31 March 2014.
- 3.4. Whilst the 2013-14 regulatory year is yet to run its course, there are currently no enforced breaches against ENWL against any of the five strands of the Legal Requirements Test in this regulatory year.

### Future compliance with the Legal Requirements Test

- 3.5. If ENWL no longer meets the Legal Requirements Test after price regulation has been lifted, we could issue a clawback direction under Special Licence Condition CRC 12.40. The clawback direction would require ENWL to pay back any relevant charges in excess of the four per cent regulated margin allowance.

## 4. Summary

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### Chapter Summary

This chapter summarises the issues discussed in this consultation. It seeks views from customers and existing and potential competitors on whether, taking all of the issues discussed into consideration, price regulation should be lifted in the Metered Demand LV, Distributed Generation LV and in the Unmetered Others Relevant Market Segments.

### Question box

***When considering your responses to these questions please only consider the ‘Metered Demand LV’, ‘Distributed Generation LV’ and the Unmetered Others Relevant Market Segments.’<sup>9</sup>***

**Question 1: Do you consider customers have an effective choice of connections provider? In particular, do you feel that levels of choice, value and service will be protected and will improve if the restriction on ENWL’s ability to earn a margin is removed?**

**Question 2: Do you consider that there is scope for 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: Do you consider that there is scope and/or appetite for new participants to enter the market? Do you consider that new entrants would be able to provide similar or better services than existing participants or are there factors constraining this?**

**Question 4: Given your overall view of ENWL, do you consider that we can have confidence in them to operate appropriately in the event that price regulation is lifted?**

**Question 5: 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?**

- 4.1. As discussed throughout this document, we consider that effective competition should not be determined by looking at market share data alone.
- 4.2. We note that ENWL carries out a large proportion of the connections work in each of the three RMSs for which it seeks 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.

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<sup>9</sup> Wherever possible please provide your response using the template at appendix 1 of this document.

## Competition in connections — Consultation on ENWL's Competition Notice

- 4.3. 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 protect customers' interests by delivering choice, quality and value for customers. We ask respondents to consider whether, on balance, consumer interests are better protected by regulation than they would be by competition. We also remind respondents that if price regulation is lifted we will continue to monitor ENWL's compliance with competition law and we will take seriously any evidence of anti-competitive behaviour.
- 4.4. We seek interested parties' responses to the questions posed throughout this document. In particular we seek customers' and existing and potential competitors' views on the following –
- Is there currently effective choice for customers in each of the three segments covered by ENWL's Competition Notice? In particular, do customers feel that levels of choice, value and service will be protected and will improve if the restriction on ENWL's ability to earn a margin is removed?
  - Is there scope and/or appetite for competitors to grow their market share in the segments covered by ENWL's application (for example, if ENWL put up its prices or if its quality of service dropped) or are there factors constraining this?
  - Is there scope and/or appetite for new participants to enter one or more of the three segments covered by the Notice in ENWL's area? 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 it to operate appropriately in the circumstance that price regulation were lifted?
- 4.5. We also seek interested parties' 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 one or more of the three segments in ENWL's area.
- 4.6. In conclusion, we encourage all interested parties to read ENWL's Competition Notice which is available on our website as an associated document to this consultation.
- 4.7. We ask that wherever possible, interested parties provide evidence to verify their claims set out in the responses to this consultation.

# Appendices

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# Appendix 1 - Consultation Responses 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. If you have any questions on this document please contact:

James Veaney  
Head of Distribution Policy  
Ofgem, 9 Millbank, London, SW1P 3GE  
0207 901 1861  
[Connections@Ofgem.gov.uk](mailto:Connections@Ofgem.gov.uk)

1.4. Responses should be sent, preferably by e-mail by 21 March 2014 to the address above.

1.5. 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.

1.6. Respondents who wish to have their responses kept confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. Respondents are asked to put any confidential material in the appendices to their responses.

1.7. Next steps: Having considered the responses to this consultation, we intend to publish our decision in relation to ENWL’s Competition Notice in April 2014.



Each of the questions asked by this consultation is set out in the template below. **Note that an editable version of this response template is available on our website as an associated document to this consultation.** If you do not wish to use our response template, please ensure that you indicate the RMS and DSA to which your experiences relate.

When considering your responses to these questions, please consider your experiences, the actions that ENWL has undertaken and the actions that you consider it could reasonably undertake.

**When answering the questions below, please check the RMS(s) that are relevant to your response.**

**Chapter Two**

Question	RMS(s)	Response
<b>One:</b> Are customers aware that competitive alternatives exist?	Metered Demand <input type="checkbox"/> LV <input type="checkbox"/> DG LV <input type="checkbox"/> Unmetered (Other) <input type="checkbox"/>	
<b>Two:</b> Do customers have effective choice (ie are customers easily able to seek alternative quotations)?	Metered Demand <input type="checkbox"/> LV <input type="checkbox"/> DG LV <input type="checkbox"/> Unmetered (Other) <input type="checkbox"/>	
<b>Three:</b> Does ENWL take appropriate measures to ensure that customers are aware of the competitive alternatives available to them?	Metered Demand <input type="checkbox"/> LV <input type="checkbox"/> DG LV <input type="checkbox"/> Unmetered (Other) <input type="checkbox"/>	
<b>Four:</b> Are quotations provided by ENWL clear and	Metered Demand <input type="checkbox"/> LV <input type="checkbox"/>	

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Question	RMS(s)	Response
transparent? Do they enable customers to make informed decisions whether to accept or reject a quote?	DG LV <input type="checkbox"/> Unmetered (Other) <input type="checkbox"/>	
<b>Five:</b> Have customers benefitted from competition? 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?	Metered Demand LV <input type="checkbox"/> DG LV <input type="checkbox"/> Unmetered (Other) <input type="checkbox"/>	

**Chapter Three**

Question	RMS(S)	Response
<b>One:</b> Does the level of competitive activity in the RMSs show that there is the potential for further competition to develop?	Metered Demand LV <input type="checkbox"/> DG LV <input type="checkbox"/> Unmetered (Other) <input type="checkbox"/>	
<b>Two:</b> Consider the organisational structure of ENWL’s business and its procedures and processes –  <b>(a)</b> how do they compare to those you encounter elsewhere in the gas and	Metered Demand LV <input type="checkbox"/> DG LV <input type="checkbox"/> Unmetered (Other) <input type="checkbox"/>	

Question	RMS(S)	Response
<p>electricity markets or other industries? Do they reflect best practice?</p> <p><b>(b)</b> do they enable competitors to compete with the timescales for connection (from quote to energisation) offered by ENWL? Or do they offer ENWL any inherent advantage over its competitors or prevent existing competitors from competing with them effectively?</p> <p><b>(c)</b> do they assist, obstruct or delay connections providers entering the RMSs?</p>		
<p><b>Three:</b> Are the non-contestable charges levied by ENWL for statutory connections in the RMSs consistent with those levied for competitive quotations? Are they easily comparable with competitive quotations?</p>	<p>Metered Demand LV <input type="checkbox"/></p> <p>DG LV <input type="checkbox"/></p> <p>Unmetered (Other) <input type="checkbox"/></p>	

Competition in connections — Consultation on ENWL’s Competition Notice

Question	RMS(S)	Response
<p><b>Four:</b> What factors are key influences on development of competition in the RMSs? In particular, if you are an existing/potential competitor</p> <p><b>(a)</b> what is the potential for you to enter new RMSs, or grow your share of an RMS you already operate in?</p> <p><b>(b)</b> are there are any types of connection in any of the RMSs, or geographic locations in ENWL’s DSA, that by their nature, are not attractive to competition? Please explain your response.</p>	<p>Metered Demand <input type="checkbox"/></p> <p>LV <input type="checkbox"/></p> <p>DG LV <input type="checkbox"/></p> <p>Unmetered (Other)</p>	

**Chapter Four**

Question	RMS(S)	Response
<p><b>One:</b> Do you agree with the methods used by ENWL to analyse the level of competition in each of the RMSs covered by its application? In particular, do you consider that ENWL gives a clear indication of the current level of competitive activity?</p>	<p>Metered Demand <input type="checkbox"/></p> <p>LV <input type="checkbox"/></p> <p>DG LV <input type="checkbox"/></p> <p>Unmetered (Other)</p>	
<p><b>Two:</b> Do you consider that competitive activity is at a level that in itself indicates that effective competition exists?</p>	<p>Metered Demand <input type="checkbox"/></p> <p>LV <input type="checkbox"/></p> <p>DG LV <input type="checkbox"/></p> <p>Unmetered (Other)</p>	

**Chapter Seven**

Question	RMS(S)	Response
<p><b>One:</b> Do you consider customers have an effective choice of connections provider? In particular, do you feel that levels of choice, value and service will be protected and will improve if the restriction on ENWL’s ability to earn a margin is removed?</p>	<p>Metered Demand <input type="checkbox"/></p> <p>LV <input type="checkbox"/></p> <p>DG LV <input type="checkbox"/></p> <p>Unmetered (Other)</p>	
<p><b>Two:</b> Do you consider that there is scope for competitors to grow their</p>	<p>Metered Demand <input type="checkbox"/></p> <p>LV <input type="checkbox"/></p>	

Competition in connections — Consultation on ENWL’s Competition Notice

Question	RMS(S)	Response
market share (for example, if ENWL put up its prices or if its quality dropped), or are there factors constraining this?	DG LV <input type="checkbox"/> Unmetered (Other)	
<b>Three:</b> Do you consider that there is scope/appetite for new participants to enter the market? Do you consider that new entrants would be able to provide similar or better services than existing participants or are there factors constraining this?	Metered Demand LV <input type="checkbox"/> DG LV <input type="checkbox"/> Unmetered (Other) <input type="checkbox"/>	
<b>Four:</b> Given your overall view of ENWL, do you consider that we can have confidence in them to operate appropriately in the event that price regulation is lifted?	Metered Demand LV <input type="checkbox"/> DG LV <input type="checkbox"/> Unmetered (Other) <input type="checkbox"/>	
<b>Five:</b> 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?	Metered Demand LV <input type="checkbox"/> DG LV <input type="checkbox"/> Unmetered (Other) <input type="checkbox"/>	

## Appendix 2 -Background

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### Chapter Summary

This chapter provides some background to our 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

1.8. 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.

1.9. Where effective competition is possible, it can be 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 service 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

1.10. 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.

1.11. 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 in Chapter 3 of this document.

1.12. 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

1.13. Since the introduction of competition<sup>10</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.

1.14. In the metered electricity connections market (across all DNOs), market penetration by new entrants<sup>11</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.<sup>12</sup>

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

1.15. 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>13</sup>

1.16. 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 CRC 12 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.

1.17. The arrangements introduced at DPCR5 have however enabled DNOs to earn a regulated margin (set at four per cent above cost)<sup>14</sup> on contestable connection services in those market segments where competition is considered viable. These market segments are described as Relevant Market Segments (RMSs) in CRC 12 and are set out in 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

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<sup>10</sup> Competition was introduced in gas connections in 1998 and electricity connections in 2000.

<sup>11</sup> ICPs and Independent Distribution Network Operators (IDNOs).

<sup>12</sup> Note that market penetration by new entrants (metered connections) rose to 23 per cent in 2010-11.

<sup>13</sup> Charge Restriction Condition 12 - <http://epr.ofgem.gov.uk/index.php?pk=folder575248>

<sup>14</sup> Previously under DNO approved connection charging methodologies their connection charge were limited to recovery of reasonable costs.



competition that may have existed when the DNOs were not allowed to earn a margin over their costs on contestable services.

1.18. In addition to this regulated margin, we also made provision for DNOs to apply to have price regulation lifted in market segments where competition can be relied upon to protect customer interests.

1.19. 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.

1.20. 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>15</sup> 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 ENWL or an inherent feature of the connections market (for example, limited access to ENWL's network for safety reasons).

1.21. 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 and Markets Authority.

1.22. 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

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<sup>15</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.

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.)
- barriers to competition (other actions the DNO is taking to remove barriers to new entrants competing in their area.)

## Appendix 3 – The Legal Requirements and Competition Tests

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1.23. 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.

1.24. The overriding objective of the Competition Test is to enable a DNO 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**

1.25. Compliance with the Legal Requirements Test 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
- the Competition Act 1998.

### **The Competition Test**

1.26. 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.)

- 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
- efforts to open up non-contestable activities to competition.

## Appendix 4 – The Relevant Market Segments

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1.27. This section reproduces all of the Relevant Market Segments (RMSs) set out in CRC 12 of the Electricity Distribution Licence.

1.28. 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 1.31 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** (EHV and 132kV connection activities.)

1.29. Metered Distributed Generation (DG)

- **LV work** (LV connection activities involving only LV work.)
- **HV and EHV work** (Any connection activities involving work at HV or above.)

1.30. 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.)

1.31. 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 5 - Glossary

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### C

#### Competition Test

The Competition Test is set out in Distribution Price Control Review 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](#)

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 services areas which correspond to those of the former public electricity suppliers (before privatisation in 1990). They are owned by six 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 Services Area](#)

Electricity DNOs each have a distribution services 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.

### **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

IDNOs own and operate various small networks embedded within DNO networks. IDNOs do not have DSAs.

## **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 6 - Feedback Questionnaire

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1.1. 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?

1.2. Please send your comments to:

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