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Consultation on Article 19 (fees for the use of means of payment) and Article 22 (additional payments) of Directive 2011/83/EU on Consumer Rights

Airtricity welcomes the opportunity to respond to the Department of Jobs, Enterprise and Innovations consultation on Articles 19 and 22 of Directive 2011/83/EU on Consumer Rights. Airtricity is a major Irish energy supplier, which serves almost 800,000 electricity and gas customers in the Republic of Ireland and Northern Ireland. We are writing to set out our general views on Article 19, with particular reference to the Department's stated view on security deposits required by energy suppliers.

While Airtricity recognises that the Directive specifically includes contracts for the supply of gas and electricity, Airtricity would like to draw the Department's attention to new requirements on energy suppliers under Directives 2009/72/EC and 2009/72/EC which have now been transposed into Irish legislation in S.I. 463 of 2011. Suppliers are required to ensure that customers are *offered a choice of payment methods which do not unduly discriminate between household customers, which shall be fair....and any difference in cost arising from choice of method of payment reflects the cost to the supplier of the different payment method.*

The Commission for Energy Regulation has included this provision in its latest revision of the electricity and natural gas supply licences. As such, Airtricity considers the requirements set out in Article 19 to already have been transposed into Irish legislation and implemented for energy suppliers and would request that the Department consider any potential conflict in the event that energy contracts are retained within the consumer rights transposition.

Article 19 fees for the use of means of payment

In relation to the consultation on Article 19, Airtricity supports both the Directive and Department's position that customers should be protected from excessive payment charges and we note that these charges have been prevalent in certain industries, in particular the travel industry. Airtricity offers our customers a variety of payment options, including Direct Debit, Post Office, selected Credit Unions, online, phone, cheque or bank transfer. Airtricity does not surcharge the majority of these payment mechanisms and in some cases offers customers a discount for making payment by a particular method. Where a surcharge exists, Airtricity considers this to be reflective of the cost of the transaction and the cost of serving the customer through that particular payment method. Airtricity welcomes the Department's proposal to include 'the cost borne by the trader' for the purposes of Article 19. To

exclude these costs would lead to all customers subsidising customers who choose to pay through the most costly mechanisms.

In addressing the discounts that some suppliers offer to their customers, the Department states that price reductions offered to customers who pay their bills by direct debit do not fall within the meaning of Article 19:

“A number of businesses, mainly in the utilities sector, offer a price reduction to customers who pay their bills by direct debit [.....] it has been clarified with the European Commission that such rebates are not a fee ‘in respect of the use of a given means of payment’ with the meaning of Article 19.”

Airtricity agrees with the reasoning of the European Commission and the Department, and notes that other EU Member States transposing the Consumer Rights Directive into legislation have come to similar conclusions. The UK’s Department for Business, Innovation and Skills stated in its consultation on the early implementation of a ban on above cost payment surcharges that:

“Firms, including energy companies, generate cost savings by collecting regular payments by direct debit and the Government believes it is legitimate, and should not be treated as being in breach of Article 19 of the CRD, to pass these savings on to consumers. If the discount offered for a particular means of payment reflects the cost savings for the trader, then it should follow that the additional amounts payable by consumers using other means of payment reflect the additional cost borne by the trader for the use of these other means.”

However, we are concerned to see that the consultation appears to suggest that the security deposits required by utility companies from new customers who pay by methods other than Direct Debit would be considered a fee in respect of the use of a given means of payment. Airtricity does not agree that security deposits can be considered a fee in any regard. A fee is a payment for a service to a supplier that is retained permanently by the supplier. A security deposit is not retained permanently by energy suppliers but is returned to the customer following a period of time where the customer has met the credit terms of their account. The only time that a security deposit is retained permanently is where the customer has failed to make payment and the deposit is used to offset legitimate charges for the provision of energy. While Airtricity recognises that security deposits in other industries may operate in different ways and require examination by the Department, the application and retention of energy related security deposits is regulated by the Commission for Energy Regulation through suppliers’ licences and we would ask that energy related deposits be considered outside the scope of this directive.

The energy industry operates differently to many other industries in that it provides its service in advance of payment. While it is standard practice to take advance payment in many industries, instead the energy industry uses a security deposit to ensure the risk of no payment is reduced. For example, it is standard practice in the telecoms industry to take a minimum of one to two months payment up front in advance of commencing service. While the costs are largely fixed in this industry, energy costs can vary significantly from season to season and from customer to customer so requesting up front actual payment is not practical. The energy industry also considers it impractical to ask that a customer wait two months to receive the electricity or natural gas that they need to allow payment to occur in advance

of use. The use of a security deposit benefits not only the supplier but also the customer in this instance.

It is also important to note that the requirements around security deposits are not limited to the customer's choice of payment type. There are a number of factors that suppliers consider in advance of setting a security deposit. These include the customer's choice of payment method, but also consider the credit risk of the customer. If the customer has chosen a very short term contract for energy or a customer has a record of missing payments, a security deposit may be applied regardless of whether the customer has chosen to pay by direct debit or not. Airtricity considers the way in which security deposits are applied in the energy industry when coupled with the existing regulatory requirements further support the exclusion of energy related security deposits from the scope of this consultation.

Airtricity welcomes the opportunity to contribute to work aimed at protecting customers from unfair commercial practices. We set high goals for ourselves with respect to working with our customers and assisting them in making payment against their bills at all times regardless of their choice of payment. While the Directive is clear in its intention, we ask that the Department consider the practicalities of different industries when transposing and including each aspect. We agree that it is important that customers are protected, but that this is done in a way that is workable for all and recognises existing legislative and regulatory requirements.

Yours sincerely

Connor Powell