



Alternative Fuels Infrastructure for Transport Issues Paper

Submission to the Department of Transport

14 June 2024



Coimisiún um
Iomáiocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

Introduction

The Competition and Consumer Protection Commission ('the CCPC') welcomes the opportunity to respond to the Department of Transport ('the Department') consultation on the Issues Paper for the Development of a National Policy Framework for Alternative Fuels Infrastructure for Transport ('the Issues Paper').

The CCPC has a statutory function under Section 10(3)(a) of the Competition and Consumer Protection Act 2014 to provide advice to policymakers on matters likely to impact on consumer protection and welfare, or competition. The CCPC's submission reflects this mandate.

At this early stage in the development of the electric vehicle ('EV') market in Ireland, it will be important that measures put in place to encourage the uptake of EVs will ultimately result in a wide range of choices for consumers. Therefore, it is welcome that competition and consumer protection have been identified as key policy considerations in relation to the charging and refuelling infrastructure required to encourage the uptake of EVs and other zero-emissions vehicles. Our response to the consultation question that focuses on these policy considerations is set out below¹.

Consultation Question 20: How best can we monitor the development of the alternative fuels market to ensure a level playing field for new market actors, and avoid business practices that may limit competition or misguide consumers and hamper price transparency?

Competition in the EV recharging market in Ireland

The most comprehensive recent analysis of competition in the Irish EV market was conducted by the consultancy firm Charles River Associates on behalf of the European Commission. A report based on their analysis was published in April 2023.² The report findings support the view that countries exhibiting high levels of market concentration are generally markets in their early phase and are in the process of expansion. This situation

¹ Many of the consultation questions are of a very technical nature and are beyond the CCPC remit. Our submission focuses on the area of most relevance to us.

² The Charles River Associates report is available here: <https://op.europa.eu/en/publication-detail/-/publication/c9f5b4eb-72ee-11ee-9220-01aa75ed71a1>. The CCPC provided views to the authors of the report during its development.

applies to Ireland, as the market started out as non-competitive, and while ESB eCars – the organisation created to develop the market across the country - remains the leading supplier, its market share has eroded over the past few years following the entry of EasyGo and other firms - such as EVBox, Tesla and IONITY. The report concluded that, with the increased presence of new players, a competitive market seems to be developing in Ireland.

As the statutory body responsible for promoting competition in Ireland, the CCPC has extensive experience of assessing the level of competition across various markets. Among the internationally recognised best practice measures used to monitor market level competition are market research, data collection and the use of tools to measure the level of concentration in the market. Measuring market concentration can in turn inform an assessment of how competitive a market is³.

Competition law is designed to protect consumers from anti-competitive behaviour and to allow businesses to compete fairly with each other. The CCPC believes that it is important that participants in the EV charging infrastructure market are aware of what they need to do to ensure they are in full compliance with competition law. For example, they could have an effective compliance programme in place that will help to create a culture of compliance with competition law. It is also important that businesses are aware of the steps available to them if they believe there is anti-competitive behaviour in a market. This includes watching for cartel-like behaviour or the abuse of a dominant position⁴. The CCPC could act if evidence suggested that participants in the market were breaking competition law⁵.

³ The OECD has published literature on measuring competition in markets. A recent example is ‘Methodologies to measure market competition’, 2021, OECD Competition Committee Issues Paper, <https://oe.cd/mmmc> One of the most commonly used measurements of market concentration is the Herfindahl-Hirschman Index (HHI).

⁴ The CCPC has a number of resources online that clearly sets out to businesses how competition law applies to them. Available at: [Competition Law ? How Does it Apply to Me and My Business? | Competition and Consumer Protection Commission \(ccpc.ie\)](#)

⁵ Information on how the CCPC decides on when to take action is set out at: [Prioritisation principles | Competition and Consumer Protection Commission \(ccpc.ie\)](#)

Pro-competitive measures in the AFIR

The CCPC notes that a core objective of the Alternative Fuels Infrastructure Regulation ('AFIR') is that recharging points for EVs should be developed as a competitive market. This will entail open access to all parties and entities offering services in support of the use of EVs operating under fair market conditions. The AFIR correctly states that actions by operators of recharging points that impede competition may ultimately lead to higher prices for consumers⁶.

Article 5(3) of the AFIR aims to prevent operators of publicly accessible recharging points from discriminating, through the prices charged, between end users and mobility service providers or between different mobility service providers. In addition, Article 5(5) will provide for price transparency which will be of assistance to consumers in choosing between competing offerings⁷. These provisions of the AFIR are very welcome but could be undermined by a lack of compliance by incumbents. If a more competitive EV charging market is to be created in Ireland, then it is very important that the measures contained in Article 5 are actively monitored and effectively enforced⁸. Enforcement of these provisions will be dependent on monitoring by an appropriate body that has specialised knowledge of the electricity or the transport sector. The CCPC suggests that any specific measures introduced in respect of price transparency on foot of Article 5(3) should complement existing rules such as those contained in the Price Indication Directive⁹. The CCPC would welcome being consulted on how that could be achieved.

It is welcome that the importance of consumers having access to clear and comparable prices at charging stations has been identified as an essential feature of the EV refuelling market. The AFIR identifies roaming capabilities as a measure that can play a role in the development of services to support the use of EVs. Roaming does serve as one example of a business practice that should be monitored as the market develops¹⁰. While roaming

⁶ Regulation (EU) 2023/1804. [L_2023234EN.01000101.xml \(europa.eu\)](https://eur-lex.europa.eu/eli/reg/2023/1804/oj)

⁷ The CCPC notes that the fuel price comparison measures in the Alternative Fuels Infrastructure Directive have been given effect by S.I. 703 of 2022 and further notes the role of the Sustainable Energy Authority of Ireland in this regard.

⁸ Article 5(6) states that "Member States shall ensure that their authorities regularly monitor the recharging infrastructure market, and in particular, that they monitor the compliance of operators of recharging points and mobility service providers with paragraphs 3 and 5".

⁹ Directive 98/6/EC

¹⁰ EV roaming allows EV drivers to charge at charging stations run by different charge point operators (CPOs) than the driver is subscribed to. This way, EV owners can charge with a single customer account at any charging station that is a party to a roaming agreement.

agreements between EV charging operators can undoubtedly create benefits for consumers, it will be important that they don't create conditions that allow for collusion or the sharing of sensitive information between competing operators, as this type of conduct can endanger the benefits of competitive markets and ultimately be harmful to consumer welfare.

Motorway concessions

The AFIR identifies existing motorway concessions as a potential cause for concern in relation to competition in the market and this is emphasised in the Issues Paper. When awarding concessions on motorways, to ensure competitive outcomes, policymakers should ensure that the process is transparent, the bidding process is open and competitive, and there are fair and objective evaluation criteria¹¹. We note the suggestion in the recitals to the AFIR that Member States competitively award new concessions specifically for recharging stations on or adjacent to existing motorway rest areas in compliance with Directive 2014/23/EU¹². The type and duration of a concession contract should be informed by previous experience of agreeing similar type arrangements. We note that Transport Infrastructure Ireland (TII) is directly involved in the provision of service areas on motorways and on previous occasions they have awarded concessions on a design, build, finance, maintain and operate ("DBFMO") basis for the period of 25 years.

Reviewing progress

We note that the AFIR states that by 31 December 2027, and every two years thereafter, each Member State shall submit to the Commission a standalone national progress report on the implementation of its national policy framework. The CCPC recommends that an assessment of the level of competition in the market is included as part of the Irish progress report and that measurement tools, such as the HHI, are used to assess the level of concentration and competition in the market over time.

¹¹ We would like to highlight that in 2022 the European Investment Bank published a useful guide that explains the typical features of a concession arrangement for public EV charging infrastructure. It explores the risks and issues associated with each aspect of a concession contract. The guide is available at: [Electric vehicle charging concessions - A contract guide for public authorities \(eib.org\)](https://www.eib.org/en/knowledge/publications/electric-vehicle-charging-concessions)

¹² See Recital 32. Directive 2014/23/EU has been transposed into Irish law by the European Union (Award of Concession Contracts) Regulations 2017.

Conclusion

An open and competitive market is the most reliable way to ensure Irish consumers will have access to a high-quality charging market at the lowest possible price for EVs and other zero-emission vehicles. The evidence shows that a competitive EV market is developing in Ireland, but it is important to monitor the market to ensure that the progress made in recent years is sustained.

We hope the points we have made in submission are of assistance to the Department and we look forward to the publication of the updated draft policy framework in the second half of 2024.

ENDS