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Technical Assistance for Improvement of Performance-Based Tariff Regulation of EMRA for Turkish Energy Markets through Introducing an Enhanced Monitoring System

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Task-6: Preparation of Regulatory Measures and Tariff Structure for SoLR in both Electricity and Natural Gas Sectors

Activity 6.1 – Tariff Structure for SoLR Report





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Abbreviations

ACER	Agency for the Cooperation of Energy Regulators
ARERA	The Italian Regulatory Authority for Energy, Networks and Environment (former AEEGSI)
AU	Acquirente Unico (Italy)
BEIS	Department for Business, Energy & Industrial Strategy
BOTAS	The Turkish Petroleum Pipeline Company
CAPEX	Capital Expenditures
CEER	Council of European Energy Regulators
CER	Commission for Energy Regulation
CNMC	The Spanish National Commission on Markets and Competition
COR	Reference Marketers In Spain
DCC	Data Communications Company
DNO	Electricity Distribution Network Operators
DSO	Distribution System Operator
DUoS	Distribution Use of System
EC	European Commission
ECRB	Energy Community Regulatory Board
EDSO	European Distribution System Operators
EI	Energimarknadsinspektionen, Swedish Regulatory Authority
EML	Electricity Market Law
EMRA	Energy Market Regulatory Authority
EUAS	Turkish Electricity Generation Company
EU	European Union
FDD	Default Distribution Supplier
FUI	The Supplier of Last Resort in Italy
GB	Great Britain
GDN	Gas Distribution Networks
kW	Kilowatts
kWh	Kilowatt hours
LCNG	Liquid to Compressed Natural Gas
LNG	Liquified Natural Gas
MENR	Ministry of Energy and Natural Resources
MGP	Day Ahead Market in Italy
ML	Liberalised Market in Spain
MPEG	Daily Products Market in Italy
MS	Member States
NG	Natural Gas
NGG	National Grid Gas
NGGT	National Grid Gas Transmission
NGO	Non-Governmental Organization
NBP	National Balancing Point of UK
NRA	National Regulatory Authority
OMIP	Iberian Energy Derivatives Exchange
OPEX	Operational Expenses
PVPC	Voluntary Price for Small Consumer





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QVD	Retail Sale Quota Component
REE	Red Eléctrica de España
SME	Small and Medium Sized Enterprises
SoLR	Supplier of Last Resort
TDCV	Typical Domestic Consumption Value
TIVG	Integrated Text on the Retail Sale of Natural Gas and Other Gases Distributed through Urban Networks
TOTEX	Total Expenditure
TSO	Transmission System Operator
TTF	Title Transfer Facility of the Netherlands
TUR	Former Last Resort Rates in Spain
TWh	Terawatt hours
UK	United Kingdom



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1 Introduction

The Supplier of Last Resort (SoLR) procedure is mainly established to ensure that the domestic customers are guaranteed continuity of supply and protected in situations such as supplier failure, bankruptcy or when the customers cannot find a supplier on the market. Although there is not a clear definition of SoLR in European legislation, the term is used in many countries with different names (e.g. SoLR, default supplier, reference supplier, incumbent supplier) and the vast majority of member countries have a SoLR system in place in order to guarantee universal service both for electricity and gas.

The number of suppliers of last resort, conditions and criteria to appoint them varies among the countries, whereas the stakeholders' roles are in general similar.

In line with the Terms of References, this report aims to analyse the different implementation of SoLR in selected EU countries. Within this context, the report covers the following analysis for Great Britain, Spain, Italy and Turkey:

- Assessment of the regulations and current procedure for selection/appointment of SoLR tariff structure
- Analysis of the stakeholders and their roles and responsibilities
- Challenges and barriers faced during the implementation
- Comparison of the practices in Turkey and gap analysis
- Recommendations for a sustainable SoLR mechanism in Turkey

In the approach of this task, aforementioned activities are handled for both electricity market and natural gas market respectively.



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2 Electricity Sector

In Europe^{1 2 3}, the legislation does not provide a clear definition of SoLR and the functions of a SoLR. However, according to Directive 2009/72/EC of the European Parliament and of the Council of 13th July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, Member States may appoint a SoLR to ensure the provision of a universal service of electricity connection and supply and impose on DSOs an obligation to connect consumers to ensure the provision of universal services.

“Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) on common rules for the internal market in electricity (recast), Recital 27 states that:

It should be possible for Member States to appoint a supplier of last resort. That supplier may be the sales division of a vertically integrated undertaking, which also performs distribution functions, provided that it meets the unbundling requirements of this Directive.”

In 24th October 2017, ACER and CEER recommended that the suppliers of last resort or default suppliers should not lead to consumers remaining inactive on a permanent basis, and SoLR mechanism should not be used as a means to keep regulated prices in place.

The recast Directive (EU) 2019/944 of the European Parliament and of the Council of 5th June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU does not also provided a clear meaning of SoLR.

In practice the SoLR is generally used not only as a mechanism to replace failing suppliers, but often performs other functions as well, including protecting inactive consumers or those with payment difficulties. In cases when a current supplier to the final household consumer goes bankrupt and is no longer able to perform its function, or the licences of a current supplier or DSO are revoked.

Table 2.1 indicates description of the SoLR in some of the EU member countries.

Table 2.1 – Descriptions of SOLR price setting mechanisms in EU Member States (MS) as provided by NRAs - 2017⁴

Country	Description
Austria	The price of SoLR depends on the standard product of the supplier which is (randomly) selected and accepting SoLR. SoLR tariffs may be cheaper or more expensive for consumers, depending on the price of the failing supplier.
Czechia	The SoLR prices are regulated by the NRA on the cost-plus basis (factually regulated prices). If SoLR requests, the NRA sets the SOLR prices as maximum prices, according to the Energy law 458/2000 Col. § 19a
Denmark	The predetermined SoLR surcharge is, by law, required to correspond to the surcharges typically applied to NordPool spot price-based products available on the market.
Great Britain	A range of factors are taken into consideration in appointing a SoLR aside from their tariff offers, and the appointment process would usually be competitive. Examples of the factors that the NRA considers in appointing a SoLR include: suppliers’ proposals to protect customer credit balances; compliance with regulatory obligations, their ability to source and absorb the costs of additional energy required by customers of the failed supplier; the robustness of their plans to handle customer “on-boarding” and customer queries etc.

¹ ACER, 30/10/2019, ACER Market Monitoring Report 2018 –Consumer Empowerment Volume

² ACER, 09/11/2016, ACER Market Monitoring Report 2015 - Consumer Protection and Empowerment Volume

³ <https://www.emissions-euets.com/internal-electricity-market-glossary/1433-supplier-of-last-resort>

⁴ ACER/CEER, 22/10/2018, Annual Report on the Results of Monitoring the Internal Electricity and Natural Gas Markets in 2017 – Consumer Empowerment Volume





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Country	Description
Latvia	The Law on electricity provides that consumers who are ensured guaranteed electricity supply shall be applied the price for guaranteed electricity supply which is calculated by applying the coefficient of 1.25 to the total amount of electricity purchase price set for the public supplier and the price of public supply service. The price for guaranteed electricity supply shall be calculated and determined by the public supplier.
Estonia	The Last Resort Tariff is applicable only to vulnerable consumers. The Last Resort Tariff is obtained by subtracting a discount (Social Bonus) from the regulated dynamic price which is based on wholesale hourly prices.
Luxemburg	The price of SoLR is more expensive than the standard products. This is done to to discourage consumers from remaining passive.
Sweden	Usually same price as for those customers who have not made an active choice.
Germany	The SoLR price is generally more expensive, because the SoLR has to calculate the risk to supply everybody who fulfils the legal requirements with only few exceptions, even when the customer is unable to pay. But the price is not allowed to exceed the price of the default supply (§ 38 Sec. 1 German Energy Act).

In line with this, some of the MSs introduced default suppliers and various protection mechanisms such as introducing a default mechanism to maintain energy supply in case of business failure of suppliers and/or DSOs, of inactive consumers or of consumers with payment difficulties. Figure 2.1 - SOLR: availability and functions in EU MSs and Norway – 2018 (number of MSs) shows various functions of SoLR in member states.

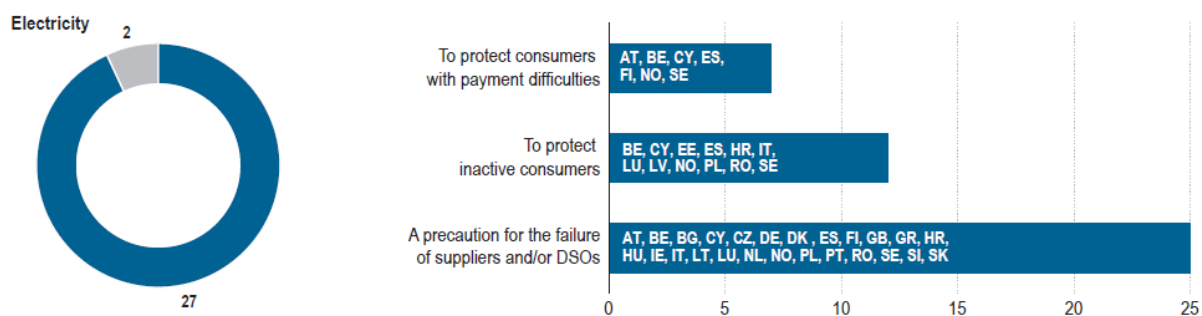


Figure 2.1 - SOLR: availability and functions in EU MSs and Norway – 2018 (number of MSs)

It can be seen, from the figure, that the SoLR is mostly used as a precaution for the failure of suppliers and/or DSOs. Protection in the case of payment difficulties refers to situations in which a final household consumer does not find a supplier in the free market (no energy supplier is willing to sign a contract with the consumer) or a final household consumer is dropped by its current supplier because of non-payment.

On the other hand, inactive consumers are protected via the SoLR mechanism if they do not choose a supplier when moving from their house, they do not choose a supplier when markets are deregulated, or their fixed term contract expires.

In Finland, suppliers with delivery obligation (default supplier) are nominated by the Finnish Energy Authority and they have to supply electricity in their area of responsibility. In Denmark all suppliers are obligated to deliver electricity to consumers in their area, except in the case of non-payment. The default supplier is substituted with a supply obligation from 1st April 2016. The previous supplier of metering point is the “default supplier”. In Sweden, Norway and Estonia DSOs have an essential role. In Sweden, obligation to supply and the supplier of last resort are not separated. DSO appoints the supplier of last



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resort/default supplier to the customer. The Regulatory Authority, EI, sees that the current default supplier system should be changed for the new supplier-centric market model. Alternative solutions for the future default supplier system are being discussed in the country. In Norway, DSO is both default supplier and supplier of last resort, with the obligation to deliver power. In Estonia, DSO is the supplier of last resort or it must designate a supplier to be the default supplier in its network. Obligation to supply is subject to standard terms and conditions approved by the Competition Authority, which have to be published on the supplier’s website. There is support allocated in the national budget for the payment of connection charge is to compensate persons living in a disadvantaged region. As it can be seen for instance in Nordic countries, there are some differences in additional obligations of default supplier or supplier with obligation to supply (e.g. tariff regulation). The general aim, however, is to encourage customers actively to choose a supplier.⁵

There are so many household consumers either remain inactive or need protection, which hinder effective retail competition. It is known that if supply of last resort is associated with regulated prices, the SoLR mechanisms may improperly promote consumer inactivity.

In terms of pricing, the EU legislation does not offer a guidance on how to determine the prices. **Error! Reference source not found.** indicates the SoLR energy price compared to conventional energy prices in EU. As expected, in most of the MSs, SoLR prices are higher than the the prices paid in competitive market since this incentivises consumers to switch to a supplier other than the SoLR.

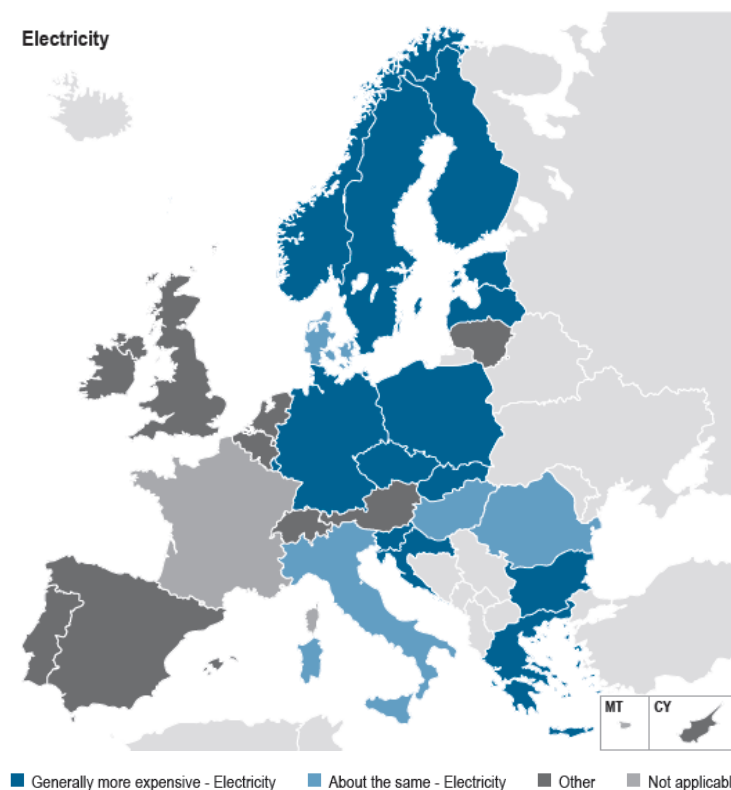


Figure 2.2: SoLR energy price compared to conventional energy prices in EU MSs and Norway (2018)

When the entity determining the energy price for SoLR is considered, there are two main approaches. The tariff is whether determined by the National Regulatory Authority (NRA) or by the SoLR. In 2018;

⁵ Pöyry, 23 October 2017, ELECTRICITY RETAIL MARKET MODELS



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- In Germany, Finland, Hungary, the Netherlands, Poland and Sweden, price is set by the SoLR without any restrictions.
- In Austria, Denmark, Slovakia, Estonia and Slovenia price is set by the SoLR according to pre-defined framework such as price range, price of standard offer, etc). In Denmark SoLR price is legally bound to be equal to the exchange spot price and a predetermined surcharge approved by the National Regulatory Authority (NRA), whereas in Slovenia, the SoLR price is directly related to the average day-ahead price of a specific exchange trading day on the electricity market.
- In Greece, Great Britain, Cyprus, Ireland, Lithuania, Luxembourg and Norway, price is set by the SoLR subject to approval/acceptance of the NRA.
- In Czechia, Spain, Italy, Portugal and Romania price is set by the Regulator.
- In Hungary and Latvia, price is set in a legal document.

In 2018, the percentage of electricity consumers supplied by a supplier of last resort varied between 0% or very close to 0% (e.g. Austria, Denmark, Greece, Ireland, Luxembourg, Latvia, the Netherlands, Norway, Poland and Slovenia), 10–20% (Estonia, Portugal and Sweden), 38% (Spain) and a very high 72% (Romania), 84% (Slovakia) and 100% (Cyprus, where only one supplier exists)⁶.

2.1 International Benchmarks

2.1.1 Great Britain

2.1.1.1 Regulations

The Supplier of Last Resort procedure was established in 2003 to ensure that when supplier failure occurs, affected domestic customers are guaranteed in terms of continuity of supply. The main document that regulates the issues related to SoLR was issued by Ofgem in November 2003.

Ofgem's **2003 Guidance on the Supplier of Last Resort** process was revised in December 2008. The **updated 2008 Guidance**⁷ set out the issues that Ofgem would consider in the event of the failure of a gas or electricity supplier, information about the process that they would follow and the criteria they would use to select and appoint a SoLR. Additionally, details about the information that industry parties would be required to provide as part of that process was explained. The guidance also considered the arrangements for dealing with supplier failures, which occurred in the winter of 2005/6 and in October 2008, when Ofgem needed to invoke the SoLR arrangements.

As a result of the changes to the industry, including the introduction of the energy supply company special administration (energy administration) regime, the Guidance was revised in October 2016 and a new **Guidance on Supplier of Last Resort and Energy Supply Company Administration Orders**⁸ has been published.

The document set out Ofgem's process for how to exercise Ofgem's powers to appoint a SoLR or if this is not feasible to seek the Secretary of State's consent to apply to the court for an energy supply company in case of administration problems. The guidance also provided information on the approach to follow in taking these decisions, including the criteria for selection of a SoLR. The guidance also set out the information Ofgem is likely to seek from industry parties so that they could prepare in advance to respond to a supplier failure situation.

⁶ UMS Group, February 2015, International comparison of Supplier of Last Resort rules and regulation

⁷ Ofgem, December 2008, Supplier of Last Resort: Revised Guidance

⁸ Ofgem, October 2016, Guidance on supplier of last resort and energy supply company administration orders



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On the other hand, the energy supply company administration regime is intended to deal with situations where use of OFGEM's SoLR powers would not be practicable. Where the court makes such an order, the energy administrator is under an obligation to run the company in accordance with objectives which differ from those which apply in ordinary administration.

2.1.1.2 Selection/Appointment of SoLR⁹

In Great Britain, preference to be a SoLR is given to those suppliers who volunteer for the role of SoLR since OFGEM consider that customers' interests will be best served by a supplier that wants to be a SoLR. The NRA evaluates whether the volunteer has the capacity and resources to fulfil the role or not. Preference is normally given to those suppliers who state that they will not make a claim for last resort supply payments although OFGEM may depart from this depending on the specifics of the supplier insolvency. In order to be a SoLR;

- All suppliers should demonstrate that they can supply additional customers without jeopardising supply to existing customers.
- A supplier must provide evidence of compliance with current credit cover rules and the ability to provide the increased cover required without reaching its credit limits.
- OFGEM assesses;
 - the issues that the supplier would face in processing the failed supplier's customers, in particular, the supplier's ability to assimilate customer information and issue bills without undue delay.
 - the supplier's ability to deal with customer enquiries, taking into account draft letters, notices, Q&As prepared, call centre capability and billing arrangements.
 - supplier's ability to deal with PPM customers acquired as part of a last resort supply direction.
- OFGEM considers the potential SoLR's prices, taking into account the explanation given by the supplier for the difference, if any, between its deemed contract prices in normal circumstances and its deemed contract prices under a last resort supply direction. OFGEM also assesses the supplier's proposals in respect of consumers who have credit balances with a preference for those agreeing to honour these balances.

Key decisions in the process are taken by a senior member or members of the staff. A panel of staff is set up to assist that person by assessing the information provided against these criteria. Suppliers might be contacted to clarify individual responses and, if necessary, discuss certain aspects of the responses, particularly the interaction of deemed contract prices and the potential for any claim for a last resort supply payment.

OFGEM has the power to appoint any supplier as a SoLR so long as they think they could carry out the role without significantly prejudicing their ability to supply their own customers and to fulfil their contractual obligations for the supply of gas and electricity.

If appointed as SoLR to some or all of the failed supplier's customers, suppliers will receive from OFGEM any information that it has available on those individual customers. On the other hand, within a reasonable period of time after appointment, the SoLR must send a notice to customers for which the SoLR has become the supplier telling them:

- the failed supplier is no longer supplying them
- the SoLR is their supplier from the date of appointment
- they are supplied under a deemed contract
- they may switch to another supplier if they wish to
- the charges payable and how those charges are determined and

⁹ OFGEM, October 2016, Guidance on supplier of last resort and energy supply company administration orders



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- any other relevant information.

The SoLR should take reasonable steps to ensure that actual or estimated meter readings are secured to enable acceptable and timely billing of customers. Additionally, in purchasing any additional electricity in order to supply its newly acquired customers, the SoLR should take all reasonable steps to do so as economically as possible under the circumstances.

OFGEM may revoke a supplier's licence and may appoint a Supplier of Last Resort by direction. OFGEM provides written guidance to the process. Licence is revoked in case the supplier:

- is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986) or any voluntary arrangement is proposed in relation to it under section 1 of that Act or it enters into any composition or scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority)
- has a receiver appointed over the whole or any material part of its assets or undertaking has an administration order made in relation to it
- passes any resolution for winding-up other than a resolution previously approved in writing by the Authority and/ or
- becomes subject to an order by the High Court for winding-up.

OFGEM might direct any electricity supply licensee to take over responsibility for a failed supplier's customers (i.e. to be a SoLR) after revocation of the failed supplier's licence. In considering which supplier to direct, OFGEM must be satisfied that the SoLR could supply the additional customers without significantly prejudicing its ability to continue to supply its existing customers and to fulfil its contractual obligations for the supply of gas or electricity.

OFGEM's general preference when a supplier is exiting the market is for a commercial solution to be found. However, where this is not possible, and where regulatory intervention is required, OFGEM step in by running a competitive process (the SoLR process) to appoint a new supplier for customers of the failed supplier (as defined). This process ensures continuity of supply and protects the credit balances of the failed supplier's customers.

In this regard, OFGEM ask companies interested in being the SoLR to provide them with certain key information as mentioned above. This includes:

- how they expect to on-board the new customers
- the extent to which they expect to make a claim to recover costs via the industry levy
- whether they have the capability to supply the increased volumes of electricity
- how they will maintain customer service standards and treat customer credit balances and information about the tariff they will put the customers on.

As an example, recently in March 2020 Bulb Energy (as SoLR) was appointed as the new supplier for Energy Limited's. Questions were sent to all of the supply licensees. The categories of questions asked to gather the necessary information for making the decision were as follows¹⁰:

OFGEM Preferences

1. Other things being equal, preference will be given to:

¹⁰ OFGEM, 14 May 2020, Announcement about Appointment of Bulb Energy Ltd as Supplier of Last Resort





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- a. suppliers who volunteer for the role of SoLR
- b. suppliers who honour, or compensate for, credit balances of the existing customers of the failing supplier
- c. suppliers who provide protection through payments to former customers of the failing supplier with a closed credit account balance
- d. suppliers who state that they will not make a claim for a Last Resort Supply Payment pursuant to standard condition 9 of the supply licence, and where suppliers who do not waive their right to a levy claim, minimize the expected size of that claim, and commit to exclude costs which they expect to incur if appointed SoLR from any future claim
- e. suppliers who minimize the extent of price increases – if any – for the customers of the failing supplier

Core Criteria

Ability to supply and industry codes

2. The SoLR should have arrangements in place to source the additional gas and electricity required for any customers acquired as part of a Last Resort Supply Direction, while enabling it to continue to supply its existing customers
3. The SoLR's shipper must have signed the appropriate Network Codes for the licenced gas transporters on whose networks the Licensee may be a SoLR
4. The Licensee must have entered into Distribution Use of System Agreements with all distribution companies in whose areas it may be a SoLR
5. The Licensee must have acceded to the Smart Energy Code
6. SoLR should be a DCC user
7. The SoLR or its shipper must be able to comply with current credit cover rules of industry codes

Customer engagement

8. What arrangements the SoLR will make to deal with the customers of the failing supplier, including:
 - a. how customers will be informed about what has happened and provided with named contact details that they can use to ask any questions
 - b. how customers' written and telephone enquiries will be dealt with
 - c. how the SoLR will ensure that customers will receive a timely and accurate bill
 - d. how communication with any smart meters will be managed
 - e. how customers will be made aware of their options to sign up to a contract with the Licensee or another supplier
 - f. information on recent customer service standards and on any recent investigation or enforcement action in connection with customer service functions
9. The SoLR must be able to operate the relevant change of supplier processes to minimize disruption to new and existing customers and other industry participants
10. The SoLR must have adequate arrangements in place to deal with customer queries (including both new and existing customers)



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2.1.1.3 Stakeholder Analysis, Roles and Responsibilities¹¹

NRA: In Great Britain, OFGEM, as the regulatory authority, sets policy priorities and makes decisions on a wide range of regulatory matters, including SoLR. There is a licence system in place and revoking supplier’s licence and appointing Suppliers of last resort are OFGEM’s responsibilities.

Transmission System Operator (TSO): TSO has to provide sufficient customer data to OFGEM to facilitate the SoLR appointment process. In the unlikely event that SoLR makes a claim for additional cost, TSO makes a levy on his charges.

Distribution System Operator (DSO): DSO has to provide sufficient customer data to OFGEM to facilitate the SoLR appointment process. In the unlikely event that SoLR makes a claim for additional cost, DSO makes a levy on his charges

Supplier: Supplier is licensee with OFGEM. OFGEM is eligible to give a “Last Resort Supply Direction” to a supplier, which the supplier normally has to accept. This means the supplier has to take over the customers of another supplier whose supplier licence has been revoked by OFGEM because of failing business performance. The 6 largest power and gas suppliers in the country are Centrica plc (British Gas), E.ON UK, Scottish and Southern Energy (SSE), RWE npower, EDF Energy and ScottishPower (together called “The Big Six”).

Metering Companies: Suppliers are responsible for metering. Standards are implemented by OFGEM including a program for accelerating the transition to smart metering. Suppliers may nominate agents for operating metering point and data delivery (no separate licence required)

2.1.1.4 Challenges & Barriers

The main challenge in the market has been exiting of the suppliers from the retail market. A combination of issues such as low capital requirement, lack of industry experience, inability to manage risks, high wholesale costs, and the retail price cap have resulted in the insolvency of these companies.¹²

As an example, several active household suppliers exited the retail market, requiring OFGEM to appoint a SoLR to absorb their customers in eight out of the ten suppliers that exited in the last 5 years. Following greater wholesale price volatility since late 2016, a few small suppliers found themselves in financial difficulties and exited the market. OFGEM successfully operated the Supplier of Last Resort arrangements for GB Energy (November 2016), Future Energy (January 2018), Iresa (July 2018), GEN4U (October 2018), Usio Energy (October 2018), Spark Energy (November 2018) and Extra Energy (November 2018). In addition, some other suppliers’ exit happened as a result of a corporate decision (e.g. Flow Energy in June 2018 and Tempus with gradual exit during 2016). Exits form part of competitive market dynamics, which is acceptable as long as continuity of supply and consumers’ credit balances are protected.¹³

Although the reasons of the exits for companies are different, they can be listed as follows¹⁴:

New entry: Smaller firms have entered a market which was historically dominated by large, well-resourced, vertically-integrated firms; the Big Six. New suppliers often joined the market via innovative offerings, such as “supplier in a box”, which have reduced barriers to entry. Smaller firms have subsequently faced cash flow challenges in light of market changes such as wholesale energy prices and rising policy costs.

Rising and volatile wholesale prices: Gas and power prices have recently been on a sustained upward trajectory. For example, in August 2018, wholesale cost for typical dual fuel tariffs rose to £468 a year, exceeding £450 a year for the first time since April 2014 – a 34% increase year on year. Wholesale prices

¹¹ UMS Group, February 2015, International comparison of Supplier of Last Resort rules and regulation

¹² Oxford Institute for Energy Studies, December 2019, Liberalized retail electricity markets: What we have learned after two decades of experience?

¹³ CEER, 17 December 2018, Performance of European Retail Markets in 2017 CEER Monitoring Report

¹⁴ Citizens Advise, 2019, Supplier of Last Resort - good practice guide





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have stabilised and then fallen in recent months but remain comparatively high. Smaller competitors who have been less able to hedge and guarantee energy prices in advance have therefore been exposed to price shocks.

Competition in tariffs: In order to build scale quickly, some suppliers have engaged in offering “loss-leading” tariffs, in order to appear close to the top of rankings on price comparison websites.

Customer Service: Some firms have struggled to offer a reasonable level of customer service. This leads to increased demand on the company, and in extreme circumstances has led to OFGEM to impose orders on the company restricting their ability to take on new customers.

Together with the changing market conditions and financial structure of the suppliers, Guidance to Appoint a SoLR was amended in 2008 and 2016. There are also new proposals that are designed to improve the financial stability of market participants and, at the same time, continue to promote innovation and competition within the industry.

Some other concerns of the customers related to SoLRs might be; whether the new supplier taking over is legitimate, why they are chosen, whether the consumer’s credit is protected, the possibility of new tariffs’ being expensive etc.

2.1.2 Spain

2.1.2.1 Regulations^{15 16}

Spain maintains public service obligations through Reference Suppliers in the case of electricity and through Last Resort Suppliers in the case of gas.

Bilateral trading of electrical energy with physical delivery by the companies responsible for default supply was regulated with the **Order ITC/400/2007** on the Spanish mainland. The default supply became entirely provided by last resort suppliers, in accordance with **Royal Decree 485/2009** of 3rd April, which regulates the implementation of the supply of last resort in the electricity market.

The **Order ITC/1601/2010** regulated CESUR auctions, where the final auction price was used as a reference for setting the last resort tariff. Standard quarterly forward contracts (base load and peak products) which were also traded in the forward markets, were purchased by the last resort suppliers in the CESUR auctions. The **Royal Decree 302/2011** established a compulsory purchase mechanism for the last resort suppliers and compulsory sale mechanism for the special regime facilities of products with price differences settlement between CESUR prices and the spot prices.

The last CESUR auction took place on 19 December 2013 and a- three-month base load product and a three-month peak product were offered at this auction for the first quarter of 2014, being the auction price, 61.83 €/MWh and 67.99 €/MWh, respectively. However, CNMC did not validate the results and the auction was cancelled. A new mechanism came into force.

Royal Decree Law 17/2013 determining the price of electricity contracts subject to Voluntary Price for Small Consumer (PVPC for consumers below 10 kW) tariff in the first quarter of 2014 was published on 28 December 2013 by the Spanish Official Journal. The regulation set the base and peak prices for calculating the energy costs to be included in the PVPC mechanism. This Royal Decree considered the base and peak settlement prices of the Iberian Energy Derivatives Exchange (OMIP) for delivery in Q1-14 registered from 1st July 2013 to 24th December 2013.

The legal provision on electricity tariffs for households was further developed by **Royal Decree 216/2014**. The mechanism for calculating the price changed from fixing in advance the energy cost component through the CESUR auctions, into a mechanism in which the consumer will pay for the energy consumed

¹⁵ CNMC, 31st July 2014, Spanish Energy Regulator’s National Report to the EC 2014

¹⁶ CNMC, 19th July 2018, Spanish Energy Regulator’s National Report to the EC 2018



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in the invoicing period valued at the spot price in such a period. Alternatively, the end-user can choose a fixed price for a twelve month period offered by the reference supplier. The objective of this mechanism is to avoid that the risk premium is internalised in long-term energy markets. In the PVPC system, the energy price paid by consumers is the price resulting from the day-ahead spot market price and ancillary services cost during the billing period.

In other words, the last resort regulated tariff for small consumers disappeared as of 1st January 2014 and instead small consumers could opt to be supplied at the PVPC. According to this new regulation, as from 1st April 2014, last resort tariffs are only available to i) vulnerable consumers and ii) consumers not having the right to be supplied under the regime of voluntary price for small consumers, do not have a free market supply contract in force.

On November 2016 the **Royal Decree 469/2016** was approved, which amended Royal Decree 216/2014, and established the new methodology for calculating PVPC, which aims to recognize the costs to carry out the supply activity made by an efficient and well-managed company. The methodology takes the three most efficient companies costs as reference, as long as these represent a market share of at least 40 percent, or a higher number of marketers to reach that quota. It also recognizes a remuneration for the exercise of supply activity. Finally, the values for the new regulated margin cost for the period 2014-2018 were established in the **Ministerial Order ETU/1948/2016**.

2.1.2.2 Selection/Appointment of SoLR

In Spain, the Reference Marketers (COR) and the Regulated Tariff (PVPC) are both set by the Government. In the regulated market, the price of the tariff is fixed by the Government. Extra services such as maintenance cannot be contracted. There are no discounts and the user can only contract with the reference commercialization companies. These marketers cannot offer other services, or discounts of any kind. The PVPC rate, which is the variable price, is set from hour to hour as dictated by the wholesale electricity market. In addition, the Government sets a marketing margin for providing this service, which must appear on the invoice broken down both in the term paid according to the peak power (kW) contracted and in the aggregate energy (kWh) consumed.¹⁷

On the other hand, the appointment of COR is different for mandatory and voluntary COR:

- **Mandatory COR:** Supply companies' part of Vertically Integrated Energy Groups with more than 100,000 customers average in the last 12 months are appointed as COR directly by the Ministry.
- **Voluntary COR:** Any supplier is allowed to request the COR condition upon submission of a proposal. Proposals sent to the Ministry must prove that candidate suppliers (aiming to become COR) comply with all the requirements set out by the law:
 - Equity (share capital) above 500,000 EUR.
 - Active suppliers in the last 3 years in compliance with all legal, technical and financial requirements.
 - Have not been severely penalised or banned in the last three years.
 - Have not been forced to transfer customers (due to court resolution) in the last three years.

¹⁷ <https://pylon-network.org/did-you-know-that-you-can-choose-your-electricity-provider.html>



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- Minimum of 25,000 customers average in the last 12 months.

Proposals to become a voluntary supplier are sent to the Ministry including all the required documents to prove the compliance with the above-mentioned requirements (e.g. System and Market Operator registrations).

Voluntary COR must comply with their obligations for at least 4 years.

Currently at national level there are 6 COR (5 mandatory (part of VIU groups) while there are more than 200 suppliers in the open market.

2.1.2.3 Stakeholder Analysis, Roles and Responsibilities^{18 19}

Ministry of Energy: Determines the reference supply companies and the prices to be applied as PVPC.

The National Commission of Markets and Competition (CNMC) is the body that promotes and preserves the proper functioning of all markets in the interest of consumers and companies. The main objective of the CNMC is to guarantee, preserve and promote proper functioning, transparency and the existence of effective competition in all markets and productive sectors, for the benefit of consumers and users. As well as ensuring efficient regulation.²⁰

The Authority is responsible from implementation of the related laws and the regulations as well as preparing consultation documents. In terms of retail market, CNMC maintains updated formats of files for the exchange of information between suppliers and distributors and approves them by Resolution. It organises several working sessions monthly with distributors and suppliers, consumers associations, and large consumers about retail market and makes analysis regarding the type of customer activity including incumbent and liberalised market. CNMC developed a price comparison tool, which compares the offers for electricity in retail market.

CNMC has the power to issue recommendations on supply prices according to Act 3/2013 including PVPC. Furthermore, pursuant to article 3 of the Directive 2009/72,

“Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies and environmental protection”.

Red Eléctrica de España, as Spanish TSO, is responsible for managing some aspects of the PVPC. This price is calculated daily by the Spanish TSO based on the energy prices per hour in the spot market and applying the average consumer profile. REE has developed an IT information service through which the small consumer can be fully informed of the price of electricity that will be applied. This new system let end users change their consumption patterns and improve the management of their electricity consumption.

The prices are applied to the electricity consumption (variable energy charge - kWh consumed) of the bill that the system operator calculates using the new approved methodology. In this way, Red Eléctrica offers consumers who have opted for PVPC, the ability to see the financial impact of their electricity consumption depending on the access costs plan chosen between the general tariff, the night tariff or the super-valley tariff (electric vehicle). A fixed charge proportional to the power contracted by the user as well as the taxes established by current legislation are also included in the bill. These prices can be applied to all small consumers, whether they have smart meters with hourly metering or not.

¹⁸ CEER, 4 November 2019, Monitoring Report on the Performance of European Retail Markets in 2018, Monitoring Retail Markets WS15 Customers and Retail Markets WG

¹⁹ CNMC, 19th July 2018, Spanish Energy Regulator’s National Report to the EC 2018

²⁰ <https://www.cnmc.es/sobre-la-cnmc/que-es-la-cnmc#objetivo>





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Reference Suppliers (COR): More than 98% (in 2019) of the customers in Spain are equipped with smart meters and they are billed based on hourly metered consumption and prices. The reference suppliers have the obligation to apply these prices to small consumers that wish to be supplied at a variable price. The reference suppliers must also offer a price which is fixed for one year, that is not regulated and can be freely set by these suppliers. This is because some consumers may wish to choose an ex-ante fixed price instead of an ex-post variable price. However, most small consumers have variable price contracts. So, only Reference Suppliers have to offer PVPC and are not allowed to offer any other type of product.

There are eight Reference Suppliers in local and national level in Spain. Six of them (Endesa Energía XXI, Iberdrola Comercialización de Último Recurso, Gas Natural SUR, EDP Comercializadora de Último Recurso, Viesgo Comercializadora de Referencia (now Repsol) and CHC Comercializador de Referencia) operate at national level, while the other two (Comercializadora de Ceuta and Teramelcor) operate at local level.

In the past four years, the number of metering points supplied by Reference Suppliers has been reduced as shown in the following table.

Table 2.2 – Evolution of subscribers per market type between 2014-2018

Market	2014		2015		2016		2017		2018	
	Consumers	%Total	Consumers	%Total	Consumers	%Total	Consumers	%Total	Consumers	%Total
Liberalized	14,799,113	51.2%	16,023,886	55.3%	16,884,410	58.0%	17,707,295	60.5%	18,149,356	61.7%
COR (SoLR)	14,084,083	48.8%	12,940,056	44.7%	12,205,476	42.0%	11,565,048	39.5%	11,261,291	38.3%
Total	28,883,196	100%	28,963,942	100%	29,089,886	100%	29,272,343	100%	29,410,647	100%

During 2017, 0.9 million consumers moved from the last resort supply in favour of free market. In the electricity sector, there were 2.3% more activations than in 2017 and as in previous years, the majority of movements occurred among liberalised suppliers (62.2% between ML-ML), and between consumers who moved from the incumbent to the liberalised market (23% between COR-ML). Also, switching back to the incumbent has increased (14.5% between ML-COR) in 2018.

Until December 31, 2018, suppliers of the five incumbents supplied 86.5% of the total number of metering points.

DSO: The meters are usually owned by the distribution company.

2.1.2.4 Challenges & Barriers

In Spain, the main challenge related to the SoLR has been related to the calculation of tariff. The methodology for calculation of the price of power on the bills received for small end-consumers changed three times. The price has been set by a quarterly auction previously, but now the prices are based on the price of electricity in the spot market (from CESUR auctions to PVPC mechanism). In 2016 the PVPC calculation methodology was revised again.



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2.1.3 Italy

2.1.3.1 Regulations^{21 22}

In line with the EU Energy Policy provisions, regulated prices are not available in Italy since 2007. However, in order to protect the domestic and small consumers which haven't chosen an electricity supplier on the free market, a new type of offer **Standard Offer** was introduced as a reference price.

Households and small businesses connected to the low-voltage network that have not concluded a sales contract in the free market benefit from the market under standard conditions (**standard offer service**). Under Decree Law No 73 of 18 June 2007, as amended by Law No 125 of 3 August 2007, small businesses are end customers other than domestic customers with fewer than 50 employees and an annual turnover or balance sheet total not exceeding 10 million Euros. The service is guaranteed by special sales companies or distribution companies with less than 100,000 users connected to their network, on the basis of economic and commercial quality conditions indicated by the Authority.

Reference prices are determined based on the procurement costs borne by the Single Buyer (so called "Acquirente Unico") with wholesale market conditions. Single buyer purchases electricity only in the spot market (i.e. the Day Ahead Market (MGP) for electricity and the Daily Products Market (MPEG) and resells it to the standard offer retailers since 2017. In other words, the energy component of the standard offer prices is set according to a market-based methodology, while the marketing component is set according to a standard cost methodology, based on the entry costs of a hypothetical new operator. The total price is charged to all consumers supplied in the ongoing offer regime without geographical differentiation.

In 2018, 45.3 TWh were sold at about 19.7 million delivery points under standard offer conditions. In the same year, the rate at which customers have left the standard offer regime marks a new record compared to previous years, reaching 4,9%. In addition, customers who switched back to the standard offer after having experienced the free market continue to decline, reaching a rate of 0,2.

The general contractual conditions for the standard offer service are compulsory two-tier and time of use tariffs, which together account for 97.3% of the delivery points. Almost all domestic customers (97.2%) pay the mandatory two-tier tariff, i.e. the economic condition that varies according to the time slot in the day and that, starting from 1st July 2010, is automatically applied to customers with reprogrammed electronic meters; only 1.8% of customers pay the voluntary two-tier rate, i.e. the rate explicitly requested by customers even before 1st July 2010; the remaining 1% of domestic delivery points are still subject to the old non-time of use tariff.

In 2019, Decree Law no. 162/2019 (so called "Milleproroghe"), converted into Law no. 8/2020, was published stating that the reference prices will not be available as of 1st January 2021 for small enterprises and as of 1st January 2022 for households and microenterprises.

The following tables indicate the customers that utilize standard offer service in 2018.

Table 2.3 – End users market for the sale of electricity²³

	VOLUMES (GWH)			DELIVERY POINTS ('000)		
	2017	2018	VAR %	2017	2018	VAR %
Standard offer market	49,979	45,271	-9.4%	21,455	19,704	-8.2%
Domestic	33,495	30,658	-8.5%	18,083	16,659	-7.9%
Non-domestic	16,484	14,613	-11.4%	3,371	3,046	-9.7%

²¹ ARERA, 2017, RETAIL MARKETS MONITORING REPORT 2016, Report 801/2017/l/com

²² Italian Implementation Plan, https://ec.europa.eu/energy/sites/ener/files/italy_market_reform_plan.pdf

²³ ARERA, Annual survey on regulated sectors



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	VOLUMES (GWH)			DELIVERY POINTS ('000)		
	2017	2018	VAR %	2017	2018	VAR %
Safeguarding Service	4,309	4,269	-0.9%	91	80	-11.9%
Free Market	202,140	205,583	1.7%	15,349	16,972	10.6%
Total	256,428	255,123	-0.5%	36,895	36,757	-0.4%

Another service, the **Safeguarding Service (Supplier of Last Resort)** is also utilized by the non-domestic customers who does not, might be temporarily, have a contract in the free market, but do not have the right to access the standard offer service. According to the Decree of the Ministry of Economic Development of 23 November 2007 the service is provided by sales companies selected by auction. If the company is awarded, it obtains the right to exercise the service for two consecutive years. The safeguarding service for the two-year period 2019-2020 was awarded in November 2018 to Enel Energia, Hera Comm and A2A Energia.

2.1.3.2 Selection/Appointment of SoLR

In Italy, consumers that do not choose a supplier remain with the local DSO as the default supplier. Default suppliers buy electricity from the Single Buyer at wholesale market price and provides electricity according to a standard offer. Other consumers (i.e. other than households and SMEs) are obliged to find a supplier, but if they cannot find a suitable offer, electricity is supplied by a Last Resort Supplier, selected through an open auction.²⁴

In September 2019, a consultation paper²⁵ was published defining some criteria for selection of safeguarding services operator. The criteria are as follows:

In order to guarantee the selection of safeguard service operators for small customers with adequate characteristics such as reliability, correct and timely fulfillment of their public service obligations, potential suppliers individually demonstrate the possession of specific requisites of economic and financial soundness, of a managerial and operational nature, differentiated according to the structure of the service that will be implemented.

- **Economic and financial soundness requirements:**

- Participant to the tender is not in a state of bankruptcy, compulsory liquidation, arrangement with creditors, even if in conditions of business continuity, or is not subjected to a procedure for the declaration of one of these situations.
- The fact that the participant has fully paid the guarantees required of Terna for access to the dispatching service and to the distribution company in relation to the transmission service in the last 12 months prior to the application to participate in the tenders, according to the timescales set out in the relative contract and the frequency and extent of any previous payment delays towards Terna or the distribution companies. The criteria

²⁴ Italy, Country Report 2014

²⁵ D. EQUIPMENT FOR CONSULTATION 397/2019 / R / EEL, SAFEGUARD SERVICE FOR DOMESTIC END CUSTOMERS AND SMALL COMPANIES IN THE SECTOR ' ELECTRICITY





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for defining the notion of late payment will also be indicated in accordance with the provisions of the respective network codes for access to services.

- Furthermore, to guarantee the adequate financial capacity of the companies admitted to the tenders for the assignment of the safeguard service for small customers, it is intended that the participants have the following obligations: (a) to have paid in full (also through the company parent company) a share capital with a minimum value of € 50,000, (b) have the certification of the last two approved financial statements (where available), (c) set up a security deposit to guarantee the reliability of the offer, the value and duration of which will be determined according to criteria similar to those followed with reference to the discipline of safeguarding large customers.
- **Management requirements:** it is intended to provide requirements: (i) integrity and professionalism of the directors of the company that intends to offer the service and (ii) the adequacy of corporate forms.
 - With reference to the integrity requirements (i), it is intended that the members of the company's boards of directors, the statutory auditors, the general managers and the legal representatives have not been affected by previous criminal convictions for fraudulent bankruptcy, as well as for banking, commercial, public administration, public trust, property, public order, public economy as well as currency and tax crimes.
 - Regarding the adequacy of the corporate forms (ii), the participating companies must be incorporated, alternatively, in the form of (a) joint stock company, (b) limited partnership company, (c) limited liability company, (d) consortium companies established in the form of joint-stock companies, limited partnerships, limited liability companies, (e) consortia with external activities, (f) special companies - or public non-profit entities defined as instrumental entities of local authority with legal personality - or (g) cooperatives.
- **Operational requirements:**
 - The Authority intends to subordinate admission to bankruptcy procedures on the condition that the activities of the participating company include those of the sale of electricity as resulting from the chamber certificate, if based in Italy, or in the case of companies based abroad, by the articles of association and from the deed of incorporation in sworn translation.

In addition, in the market, it is only possible to participate to tenders if the company is able to obtain supplies directly on the wholesale market (without the intermediation of a third party as user of the dispatching and transmission).

In order to be capable of managing the safeguard service for small customers and the contractual relationship with a potentially vast audience of customers, it is also advised that the participants of the tenders should have been supplied, as commercial counterparty, in the last 12 months prior to the application, a minimum number of withdrawal points (e.g. between 50,000 and 100,000 or alternatively determined as a percentage of the average size of the areas to be assigned).

Following admission to the selection procedures for the provision of the service and for the entire period of assignment of the same, the operators must continue to ensure compliance with the requirements referred above.

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As mentioned before, these rules are published as a consultation paper and is not in force yet.





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2.1.3.3 Stakeholder Analysis, Roles and Responsibilities

The Government (Ministries such as the Ministers of Economic Development, Economy and Finance, Labour and Social Policy): develop strategies, prepares, and publishes policy documents, evaluates the recommendations prepared by the Regulatory Authority and introduces new mechanisms.

NRA: Italian Regulatory Authority for Energy Networks and Environment, ARERA, is responsible from making the mechanisms operational defined by the Government. The Authority determine the most effective procedures of implementation, taking into account the need to maintain the economic equilibrium of companies. ARERA establishes the standard offer price at the beginning of each regulatory quarter. The Authority also laid down the criteria to implement an independent price comparison tool operated by the Single Buyer which would help household and small enterprises to assess the merit of the different electricity offers that are available on the market.

Moreover, ARERA develops provisions and consultations regarding retail market, switching procedures etc. and takes measures regarding the marginal consumption cost of electricity, more transparent and clearer invoices, and more stringent rules on brand unbundling etc. for better functioning of the market.

DSO: Households and small enterprises (with less than 50 employees and less than 10 million euro revenue) connected at low voltage level who do not choose a supplier in the free market are supplied by a default supplier which is the local DSO or a supplying company belonging to the same group of the DSO according to Law no. 125/07. In this case DSO provides electricity according to a standard offer and purchases electricity from the Single Buyer at wholesale market price.

Retailers: Last resort service is being assigned to retailers selected through open auctions for a period of two consecutive years.²⁶

2.1.3.4 Challenges & barriers²⁷

In Italy, one of the challenges has been household customers' not being ready to engage in a fully liberalized market consciously and safely since they would face higher prices than standard offer regime.

Although the standard offer cannot be considered a regulated price, it was thought that it might represent a reference value that discourages competition among retailers and promotes customers' inertia towards better offers. According to the data in 2012 and 2013, households supplied under the standard offer regime saved, respectively, 12% and 20% on the energy and commercialization tariff components with respect to household customers which were supplied under free market conditions. On the other hand, other fees such as distribution fee, taxes, levies are not considered. However, when the free market offers are higher than standard offer, retailers will have difficulty in operating in the free market to compete with the single buyer by means of discounts on the energy procurement component of the tariff. The single buyer does not bear any risk in the procurement of energy as its procurement costs are fully covered in the electricity tariff applied to customers supplied with the standard offer. However, it is thought that the free market retailers bear the risks, which means costs, related to the market procurement of energy.

On the other hand, ARERA states that a sudden full liberalization of the retail power market shall be avoided since the retailers might increase prices by exploiting their market power, given the high market concentration and customers' inability to react timely to possible price increase. In addition, the risk that ex-incumbents benefitting of cost, information, and marketing advantages that may be detrimental to a well-functioning competitive retail market and to customers' wellbeing shall be considered.

²⁶ https://ec.europa.eu/energy/sites/ener/files/italy_market_reform_plan.pdf

²⁷ <https://www.ispionline.it/en/energy-watch/italian-electricity-retail-market-critical-overview-recent-monitoring-report-national-regulatory-authority-12649>





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Market concentration is also an important aspect to be taken into account when evaluating the likelihood that market power abuses might arise.

Another issue has been the lack of awareness of household customers about the functioning of the market.

2.1.4 Turkey

2.1.4.1 Regulations

In Turkish electricity market, supply of last resort is defined in the **Electricity Market Law, numbered 6464**, as the electricity supply to the consumers not supplying electricity from any other supplier, despite being an eligible consumer, apart from a company holding a supply license and authorized as the last resort supplier.

According to the Law, the last resort supply tariff shall be established considering the retail tariffs in force and the market prices in order to ensure consumers' engagement in the competitive market and to enable the last resort supplier to gain a reasonable profit. Notwithstanding the limitations, a separate tariff may be designed, considering the social and economic conditions, for the consumers consuming energy lower than the amount to be determined by the Board. Tariffs set to be applied under the last resort supply obligation shall be proposed separately by the supply licensees. The last resort supply tariff shall include the charges covering all the costs and services within the scope of last resort supply such as active energy costs, invoicing and customer services costs, and retail service costs²⁸

Recently, **Communique on Regulation of Last Resort Tariff** was enacted with the Official Gazette published on 20th January 2018 with number 30307. According to the Communique, consumers of last resort tariff are grouped as consumers with high-consumption and low-consumption.

In order to determine the last resource supply tariff for high-consumption consumers, the invoicing and customer services costs, CAPEX such as retail sales service and/or OPEX, energy cost and profit margin (which is declared as 1.128 for 2018 and as 1.0938 for 2019 and 2020) are taken into account. The last resort tariff for high-consumption consumers is determined to motivate those consumers to enter the competitive market. In order to incentivise competitive market, last resort tariff is determined by the Board as equal to or more than the retail sales tariff approved for the non-eligible consumers. For the low-consumption consumers, approved retail sales (regulated) tariff for non-eligible consumers is applied. The last resort tariff approved for low-consumption consumers starts with the eligibility of the relevant consumer and continues until the consumer makes a bilateral agreement with any supplier, loses the eligible consumer right or is included in the high consumption consumer group. Therefore, low-consumption consumer group is defined to protect the consumers below a pre-determined consumption value against the competitive market dynamics which could be relatively higher.

For 2018, the limit for being high-consumption consumer was initially determined as **50 Million kWh**. On the other hand, together with the Board Decision numbered 8135 and dated 1st January 2019, the limit for being high-consumption consumer except households was decreased to **10 Million kWh**, and no limit has announced for households which resulted in accepting all households in low-consumption group. Finally, in accordance with the Board Decision numbered 8861 and dated 30th September 2019, high-consumption limit for households and for other consumer groups were declared as **50 Million kWh/year and 7 Million kWh/year**, respectively. This limit is determined with considering the social and economical conditions in the market and has been revised annually.

²⁸ Electricity Market Law, Nr:6464, dated 14/3/2013



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2.1.4.2 Selection/Appointment of SoLR

According to the Electricity Market Law, every incumbent supply company is obliged to provide electricity as a last resort supplier to every consumer not able to supply electricity from other suppliers despite being an eligible consumer. The operation of the last resort supplier is in the relevant distribution area and this is inserted into the supplier license. In case of termination or annulment of the licence of a supply company under the obligation of last resort supply, EMRA takes any kind of measure until another legal person is appointed as the last resort supplier instead of the incumbent supply company, the license of which is terminated. The legal entity appointed by the Board as the last resort supplier is granted a new supply license.²⁹

Tariffs of electricity to be supplied in the capacity of the last resort supplier is also determined by the Board.

2.1.4.3 Stakeholder Analysis, Roles, and Responsibilities

NRA: EMRA is responsible from preparation of national tariff and the tariff takes effect upon approval thereof by the Board. EMRA issues the methods concerning the determination of pricing principles to be applied to electricity sales within the scope of the last resort supply and/or to non-eligible consumers considering the market requirements.

Other responsibilities in terms of last resort supply are as follows:

In case of termination of the licence, EMRA takes any kind of measure until another legal person is appointed as the last resort supplier instead of the incumbent supply company, the licence of which is terminated. In addition, EMRA issues the procedures and legislation and principles regarding the last resort obligations, last resort supply tariffs, determination of supply periods, limits and conditions, and the last resort supply implementations.

Incumbent supply company: Acts as the last resort supplier in Turkey. SoLR supplies electricity to the consumers not supplying electricity from any other supplier, despite being an eligible consumer.

Last resort supplier purchases electricity in exchange for prices set based on source types in Law No. 5346 of 10/05/2005 on the Utilization of Renewable Energy Sources with the Purpose of Electricity Generation, if the surplus electricity generated from renewable energy sources by a person exempted from the liability to obtain a license is fed into the system.

EUAS: Every supplier authorized by the Board as a last resort supplier is obliged to supply some portion of the electricity from EUAS, at a portion to be determined by the Board every year.³⁰

2.1.4.4 Challenges & barriers

The main challenges regarding SoLR, in Turkey, has been the link between cross subsidization, national tariff and the last resort tariff. According to the legislation, until the end of cross subsidisation application, retail tariff will be applied to the last resort consumers. In addition, in accordance with the Electricity Market Law with the most updated amendments, national tariff and cross subsidization would be implemented till the end of 2020.³¹ In line with the developments in the electricity market, strategy documents published by the Ministry and considering the benchmarks in the world, it is known that eligible consumers limit will be 0 in the future. When this limit becomes “0” national tariff implementation will also end. In this regard, a new last resort tariff methodology shall be developed.

Together with the recent legislative developments about SoLR, many Organized Industrial Zones and high-consumption cement or iron-steel factories were invoiced via last resort tariff. Getting familiar with

²⁹ Electricity Market Law, Nr:6464, dated 14/3/2013

³⁰ Electricity Market Law, Nr:6464, dated 14/3/2013

³¹ Electricity Market Law, Nr:6464, dated 14/3/2013



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the new regulations and arranging their existing operations considering the new tariff structure has been a challenge for those consumers. Moreover, the financing and imbalance cost burdens shall also be well analysed both by the consumers and the SoLR since the deviations in the consumption forecast might cause imbalance and this will be an extra burden on the supplier.

2.1.5 Gap Analysis and Recommendations

When the recent changes or regulatory developments related to SoLR is considered in Turkey, it can be stated that there is not a huge gap between most of the EU countries and Turkey about implementation of last resort tariffs and suppliers.

- Nearly, in all of the countries, SoLR is defined similar to each other and either the small consumers or the big ones which do not purchase their electricity from a supplier under competitive market conditions are obliged to purchase the electricity via SoLR tariff. However, the name of the service provider differs among countries, such as reference supplier/marketer in Spain or safeguarding services operator and standard offer service in Italy.
- The main difference between Turkey and other countries is the eligible consumer limit, which is 0 in EU countries and 1,400 kWh in Turkey. The national tariff and cross subsidization are other differences between Turkey and other countries.
- In Turkey SoLR is used to protect low-consumption consumers such as households or SMEs and for precaution of suppliers similar to the most of the EU Member States.
- Selection of SoLR differs among countries. In UK, SoLR is selected among the volunteer supply companies that meet some criteria such as capacity and resources. In Italy, consumers that do not choose a supplier remain with the local DSO as the default supplier. Other consumers (i.e. other than households and SMEs) are obliged to find a supplier, but if they cannot find a suitable offer, electricity is supplied by a Last Resort Supplier, selected through an open auction. In Spain government assigns the supplier, and incumbent supplier has the responsibility of SoLR tariff in Turkey.
- Pricing differs among countries too. Especially for the high-consumption consumers, the price for SoLR is determined considering the spot market price in some countries such as Denmark and Spain, similar to Turkey. In Italy, default supplier (for low-consumption consumers) also buy electricity from the Single Buyer at wholesale market price and provides electricity according to a standard offer.
- In general, main challenges have been financial sustainability of the supply companies, pricing methodology of the SoLR and selection procedure of the SoLR.
- Vulnerable consumers are also treated under SoLR in some countries such as Spain and Italy.

Analysing the international benchmarks and gaps, following recommendations could be listed:

- Similar to the existing implementation, customers should be grouped as high-consumption consumers and low-consumption consumers via a consumption limit. In contrast to the existing framework, a single consumption limit is recommended to be determined for entire consumer groups and not change per different ones. The existing limit for households – i.e. 50 Million kWh/year – practically means that households will not subject to the encouraging fees of SoLR tariff for competitive market. Since the full liberal market is expected to be in charge, entrance of households in the competitive market should also be motivated to enhance free market. In





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addition, determining a meaningful consumption limit – e.g. between 10 MWh/year and 50 MWh/year - will still be assisting the market to protect the most of households and SMEs. This approach will improve the encouraging characteristics of SoLR mechanism for free market, which is the nature of last resort tariff policies.

- In order to incentivise the competition in the market and to encourage energy supply under free market conditions, last resort tariffs shall be equal to or higher than the regulated retail tariffs and shall reflect the spot price market prices. Incumbent retail sales companies supply electricity to these consumers.
- On the other hand, it is thought that providing electricity to low-consumption consumers such as households or small and medium enterprises (SME) is not a competitive activity and low-consumption consumers shall be protected in terms of increasing or changing market prices. In this regard, it is recommended that DSOs could supply electricity to these customers similar to Italian standard offer service, Norway or Estonia. With this approach, it is aimed to prevent low-consumer supplier from gaining consumer from free market, and DSO is the perfect stakeholder for this purpose.
- It is also recommended that; if those low-consumption consumers choose a supplier under free market conditions once, they cannot be supplied by or return back to the DSO anymore. In that case, they are required to choose their suppliers under competitive market conditions. If they do not choose, they need to purchase their electricity from the incumbent supplier (SoLR) via the price determined for high-consumption consumers within SoLR tariff mechanism.
- Unlike the existing framework, high-consumption consumers should not switch back to low-consumption consumer group with respect to their consumption unless the legal entity of the consumption point changes. The expectation for the end of cross-subsidization process and tendency for the enhancement of free market conditions are the main reasons behind this recommendation.
- In case of termination of the contract or bankruptcy of a supplier acting in competitive market or the supplier can no longer able to perform its function, the electricity for existing consumers of the that supplier might be provided by the DSO in its region, with a price equal to the one stated its existing contract for a limited period of time that will be determined within the related legislations. After the determined period, consumer will need to find a new supplier under free market conditions.



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3 Natural Gas Sector

DIRECTIVE 2009/73/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (the Directive) has got following content about supplier of last resort: “Member States shall take appropriate measures to protect final customers, and shall, in particular, ensure that there are adequate safeguards to protect vulnerable customers. In particular, they shall take appropriate measures to protect final customers in remote areas who are connected to the gas system. **Member States may appoint a supplier of last resort for customers connected to the gas system. ...**”

Directive 2009/73/EC does not foresee universal service, however it promotes a supply of last resort mechanism for gas consumers³². As European legislation does not further define the meaning and functions of a SoLR other than the above cited provision (“Member States may appoint a supplier of last resort for customers connected to the gas system”), Member States have used this flexibility to introduce various protection mechanisms, for example in case of business failure of suppliers and/or DSOs³³.

In that manner, SoLR has assumed different functions in different member states: To protect consumers with payment difficulties (Austria, Belgium, Denmark, Finland, Sweden), to protect inactive consumers (Czechia, Denmark, Estonia, Spain, Luxembourg, Latvia, Sweden) and precaution for the failure of suppliers and/or DSOs (Austria, Czechia, Germany, Denmark, Spain, Finland, France, Great Britain, Croatia, Hungary, Ireland, Italy, Lithuania, Netherlands, Portugal, Romania, Sweden, Slovenia, Slovakia). So, the most assumed role for a SOLR is being the final supplier for the customers affected from failure of a supplier and/or DSO. The figure below shows the defined picture of the EU countries.

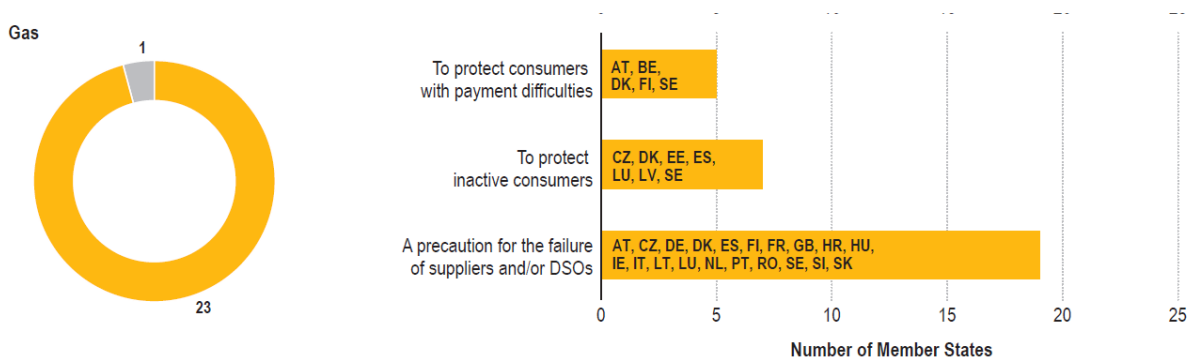


Figure 3.1: Supply of last resort: availability and functions in EU Member States – 2017 (number of Member States)

Other than Germany, Denmark, Finland, France, Netherlands, Italy and Sweden, there is involvement of the member states in the determination of the SoLR price, in various ways. EU legislation does not set a rule for determination of the SoLR price and appointment of the SoLR, as a consequence of this fact, practice differs among the member states.

³² <https://www.emissions-euets.com/internal-electricity-market-glossary/1432-universal-service>

³³ ACER/CEER - Annual Report on the Results of Monitoring the Internal Electricity and Natural Gas Markets in 2017 - Consumer Empowerment Volume





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3.1 International Benchmarks

3.1.1 Great Britain

3.1.1.1 Regulations

SoLR procedure was established in 2003 to ensure that when supplier failure occurs, affected domestic customers are guaranteed continuity of supply. The SoLR process has been activated repeatedly as an increasing number of energy suppliers have exited the market. When the OFGEM revokes a supply licence usually because of insolvency, it can appoint a 'supplier of last resort' (SoLR) on a case-by-case basis to take over the supply of gas and/or electricity to the insolvent supplier's customers. The aim is to provide seamless continuity of service for customers. The regulatory regime for this is primarily provided for in the Standard Conditions of the supply licences held by Great Britain's (GB's) electricity suppliers and gas suppliers. In the event that an energy supplier becomes insolvent, OFGEM will revoke that supplier's supply licence and exercise its discretion in appointing a SoLR. Upon appointment, the SoLR assumes responsibility for the failed supplier's customers. In 2008, OFGEM published guidance on its approach to the appointment of a Supplier of Last Resort which was, at the relevant time, OFGEM's only power to deal with supplier failure. Since then there have been legislative changes which have given OFGEM, with the Secretary of State's consent, powers to seek an energy supply company administration order under powers given to it by the Energy Act 2011 (EA 11).

OFGEM may revoke a supplier's licence and may appoint a SoLR by direction. OFGEM provides written guidance to the process. If a supplier fails to fulfill financial or technical obligations OFGEM will try to appoint the supplier or its receiver in case of a bankruptcy in order to find a solution for the continuity of supply. Precondition is that the supplier agrees to fulfill his (financial) obligations for a period of time (not specified). The process is recently changed, in the sense that process is different for suppliers < 500.000 customers and suppliers > 500.000 customers. Falling away of smaller suppliers: OFGEM uses the time to ask other suppliers for their conditions to take over the failed supplier's customers. The Last Resort Supply Direction is given to the supplier offering the most convenient and economic model for continuing supply. There can be one or more suppliers of last resort. SoLR is appointed by written notice. The process in an overview:

- obtaining information from a variety of sources about the failing supplier's customer portfolio (all information required to prepare a qualified proposal for supply);
- discussions with any receiver appointed to the failing company;
- providing information about the failing supplier's portfolio to potential SoLRs and obtaining information from them about how they could take over responsibility for customers; and
- deciding which supplier to appoint as a SoLR if OFGEM decides to revoke the failing supplier's licence.

There will also be an detailed assessment in advance. The direction lasts for at least six months; prices for this so called deemed contracts are considered by OFGEM (can be higher than customers' former prices). Customer can agree a replacement contract with SoLR or switch to another supplier. A SoLR is eligible to make a claim for higher costs paid by a levy on gas transporters" and electricity distributors' Distribution Use of System (DUoS) charges in this case all customers in a grid have to pay for higher costs, what OFGEM is not convenient about. If no supplier agrees to be SoLR OFGEM is eligible to direct without consensus. In this case the Big Six are the preferred SoLR. Timescale: not clearly specified but as quick as possible; The revocation and the effective date of appointment of the SoLR always coincide; It is up to the SoLR to assure a timely switch of supply in case of suppliers > 500.000 connection points, the following process applies. Check whether there is public interest (widely defined). If yes, a special request (Ministry supported by OFGEM) can be given to the court to appoint an administrator with 'expertise in energy'





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(confidential list). In that case, also a bank guarantee may be given to the administrator in order to continue operations. Bank guarantee is provided by Ministry of Finance. OFGEM is in the lead for the process. Bank guarantee is given for 6 months, with possibility to prologue another 6 months. Details of the process still need to be worked out.

Special for Gas

Gas supplier and gas shipper are separated roles in GB. A shipper may act as an upstream supplier for several suppliers. OFGEM has no obligation when a shipper fails but expects the supplier to take over shippers charges after 23 days and to appoint a new shipper within 25 days (gas suppliers licence condition).³⁴

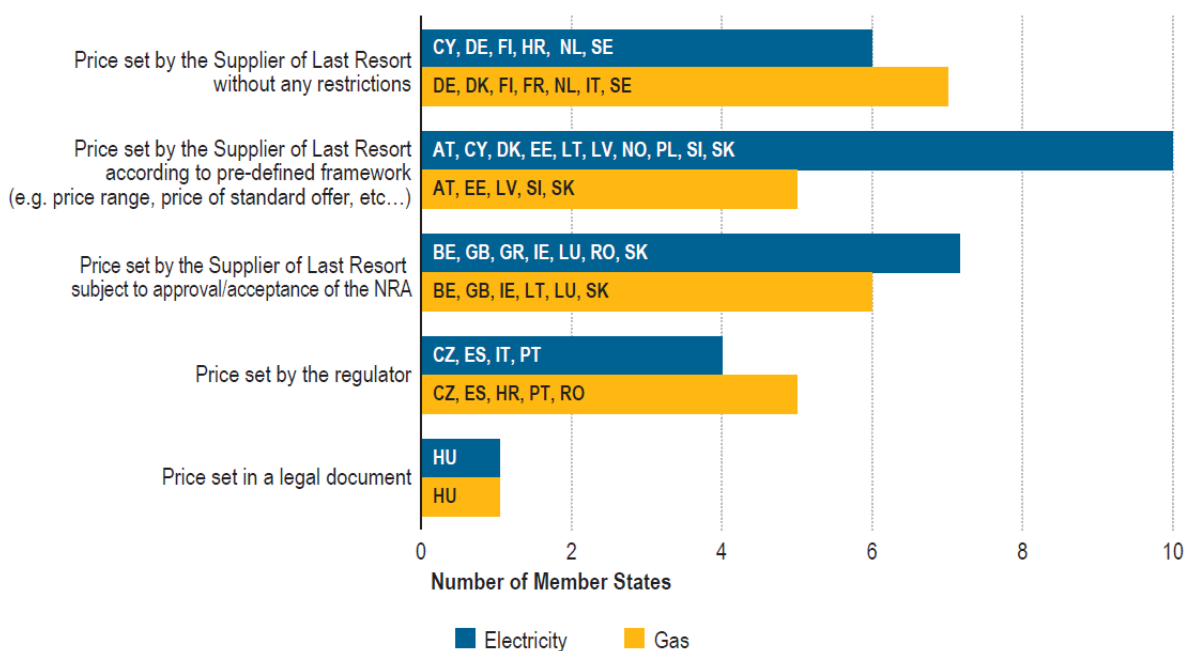


Figure 3.2: Consumer Empowerment Volume³⁵

3.1.1.2 How is SoLR Selected/Appointed

Where an energy supplier is facing potential insolvency, there is a requirement for it to liaise with OFGEM. Given OFGEM’s focus on the interests and needs of customers, each supplier of gas or electricity provides it under a supply licence granted by OFGEM. This licence sets out the required conduct of suppliers and, amongst other obligations, places a duty on the supplier to offer to supply energy to domestic customers. All energy suppliers are subject to these licences and they can only be revoked by OFGEM in certain circumstances (one of which is insolvency). In the event of potential insolvency, it is possible for OFGEM to seek the consent of the Secretary of State for BEIS to make an application under the Energy Acts 2004 and 2011 for the appointment of an Energy Supply Company Administrator. However, OFGEM’s

³⁴ International comparison of Supplier of Last Resort rules and regulation | February 2015

³⁵ ACER/CEER - Annual Report on the Results of Monitoring the Internal Electricity and Natural Gas Markets in 2017





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published guidance indicates that it will only do so if it is not practicable to revoke the suppliers' licence and to appoint a Supplier of Last Resort.

The SoLR process is OFGEM's method of ensuring that the interests and supplies of customers are protected throughout the insolvency process. The SoLR will be another energy supply company which can either volunteer or be directed by OFGEM to step in and take on the customers of the insolvent energy company who will seamlessly transfer across to the new supplier. In order for OFGEM to have sufficient time to determine its preferred approach to a supplier's potential insolvency, the terms of the supplier's licence provide that OFGEM is added to the list of parties entitled to receive notice of a proposed appointment of an administrator.

The licence also provides that the appointment of an administrator cannot take effect until 14 days have elapsed after service of the final document required to complete the appointment of an administrator (namely, the administrators' notice of appointment). In practice, the supplier will usually already have had some engagement with OFGEM prior to getting to the stage where appointment documents are being filed/served so that a preferred strategy is agreed with OFGEM in advance. The 14 day notice period referred to above and the statutory time limits imposed on other insolvency processes are far from ideal against the backdrop of the worsening financial position of the supplier and more importantly, consumer unrest and uncertainty. Accordingly, the energy licence also provides that OFGEM has the power to revoke a supplier's energy licence (to enable the SoLR process to commence immediately thereafter) if the supplier is unable to pay its debts within the meaning of section 123 (1) or (2) of the Insolvency Act 1986.

This route does not have any statutory minimum days' notice requirements but does require the court to be satisfied as to the supplier's insolvency thereby necessitating court involvement. This is precisely the route that was followed in the Economy Energy case. Almost immediately following the application to court and the resulting declaration of insolvency of supplier, OFGEM can able to revoke the supplier's supply licences to allow another supplier to become the SoLR and all customers at that time automatically transferred to SoLR with no interruption of supply. Once customers transfer, the process to appoint administrators complete. Transitional services are agreed and concluded between the administrators and the SoLR and the administrators are able to begin their work in collecting any debts which remained with the company to ensure the best possible outcome for creditors of the company.

OFGEM's preferred method of appointment is a "trade sale" of the assets belonging to the licensee whose licence is to be revoked, without the need for regulatory intervention³⁶. If a trade sale is not feasible, OFGEM will proceed to appoint a SoLR by giving a direction under the SoLR's relevant supply licence, known as a 'Last Resort Supply Direction'. Should the SoLR process not be viable, OFGEM will seek the Secretary of State's permission to apply to the court for an energy supply company administration order, pursuant to sections 155 and 156 of the Energy Act 2004.³⁷ As set out in Condition 8.1 of both the Standard Conditions of Electricity Supply Licence and the Standard Conditions of Gas Supply Licence³⁸ (the 'Standard Conditions'), OFGEM may only appoint a SoLR if that supplier can comply with its obligations as a SoLR without significantly prejudicing its ability to: (i) continue to supply its existing customers; and (ii) fulfil its contractual obligations for the supply of energy. Given OFGEM's discretion in appointing a SoLR, the criteria detailed in the Standard Conditions represent the minimum requirements. In its guidance on the SoLR process³⁹, OFGEM outlines additional criteria which will be taken into account, including:

³⁶ OFGEM, Supplier of Last Resort: Revised Guidance 2016. Available at: ofgem.gov.uk

³⁷ As varied by section 11 of the Energy Act 2011 and the Energy Supply Company Administration Rules 2013, SI 2013/1046.

³⁸ Available at ofgem.gov.uk

³⁹ OFGEM, Supplier of Last Resort: Revised Guidance 2016. Available at: ofgem.gov.uk.



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- whether the supplier has volunteered to be a SoLR – OFGEM will show preference to volunteers;
- whether the supplier would seek a ‘Last Resort Supply Payment’ (essentially, a levy that socialises some of the costs associated with fulfilling its role, over and above the charges the SoLR would be entitled to under its deemed contracts);
- whether the supplier can procure any additional gas or electricity as may be necessary to fulfil the role of SoLR;
- the level of charges the supplier proposes for the deemed contract under which it would be supplying the failed supplier’s customers; and
- whether the supplier will be able to accommodate an efficient transition so as to minimise disruption to customers.

In relation to this last point, given the high potential for service disruption following the insolvency of an energy provider, a SoLR will need to be able to move quickly at the acquisition stage if it is to be considered as a credible purchaser. This means it will need to be able to complete its due diligence on the target, and, among other things, obtain any necessary licences and consents, organise financing and make any relevant regulatory notifications in a proactive and timely manner. Although not formally one of the criteria OFGEM uses to select SoLRs, a SoLR also will require a firm grasp of the implications of acquiring a business out of an insolvency process. A SoLR will need to be able to negotiate with insolvency practitioners, for which it will require an appreciation of the relevant insolvency practitioner’s duties to the target’s creditors, particularly in relation to valuation. Insolvency practitioners also are unlikely to have a detailed understanding of the target’s business and will therefore be unable to give the same extensive warranties and contractual protections that a seller would ordinarily provide in a solvent sale. This, in turn, will place greater importance on the quality of the due diligence undertaken by the SoLR.

The power to appoint a SoLR only arises once OFGEM becomes entitled to revoke the failing supplier’s licence to supply. A SoLR appointment lasts no longer than six months, after which the customers of the failed supplier become ordinary customers of the SoLR and are charged at the SoLR’s rates. Within a reasonable period of time following its appointment, the SoLR must send a notice to each of the premises listed in the Last Resort Supply Direction, informing each customer:

- that the SoLR took over responsibility for supply of energy from the failed supplier on the date upon which the Last Resort Direction was given;
- that supply will take place under a deemed contract;
- that the customer is entitled to enter into an alternative contract with the SoLR or with a different supplier (though customers are urged not to switch until the SoLR process has completed in order to avoid additional complexity); and
- how charges will be determined under the deemed contract.

Latest development - Appointment of British Gas Trading Limited as Supplier of Last Resort (14 May 2020):

On 21 December 2019, OFGEM announced⁴⁰ that we had appointed British Gas Trading Limited (“British Gas”) as the new supplier for Breeze Energy Supply Limited’s (“Breeze”) gas and electricity customers and

⁴⁰ OFGEM, OFGEM appoints British Gas to take on customers of Breeze Energy, 21 December 2019



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issued our decision to revoke Breeze's gas and electricity licences.⁴¹ This followed OFGEM's earlier announcement that Breeze had ceased trading.⁴²

The SoLR process: The number of suppliers in the retail energy market has increased significantly over the last eight years. The market share of the largest suppliers has decreased and now more than 30% of customers get their energy from small and medium suppliers. This has brought benefits to consumers through increased price competition and pressure on incumbent suppliers to improve their customer service. However, as in any competitive market, suppliers can sometimes fail. Energy is an essential service. As such, when a supplier fails, OFGEM's priority is to ensure its customers have continuity of supply. OFGEM's general preference when a supplier is exiting the market is for a commercial solution to be found. However, where this is not possible, and where regulatory intervention is required, OFGEM step in by running a competitive process (the SoLR process) to appoint a new supplier for customers of the failed supplier. This process ensures continuity of supply and protects the credit balances of the failed supplier's customers. OFGEM can direct any licensee to be a SoLR.⁴³ However, to ensure OFGEM appoint the company OFGEM think is best placed to protect customers of a failing supplier, OFGEM ask companies interested in being the SoLR to provide us with certain key information. This includes: how they expect to on-board the new customers; the extent to which they expect to make a claim to recover costs via the industry levy; whether they have the capability to supply the increased volumes of electricity and gas; how they will maintain customer service standards and treat customer credit balances; and information about the tariff they will put the customers on. Where possible, OFGEM also seek to appoint a company that has volunteered to act as a SoLR.

Background to this decision: In December 2019, Breeze confirmed to OFGEM that it was in severe financial difficulties, at which point OFGEM prepared to commence the SoLR process, to ensure consumers were protected. In accordance with OFGEM's standard process and published SoLR guidance, OFGEM undertook the following steps leading up to the decision OFGEM announced on 21 December 2019:

- OFGEM sought information from Breeze on their customer base and arrangements for supply, for the purposes of running the SoLR process.
- OFGEM sent information requests⁴⁴ to all licensed gas and electricity suppliers who had expressed an interest in being appointed as a SoLR, asking them to explain how they would manage being appointed as a SoLR for Breeze's customers. Among other things, OFGEM asked suppliers for information on their willingness to act as a SoLR, their capability to supply the customers and the terms they proposed to offer customers if successful.
- OFGEM sought relevant information from network licensees, and industry central systems bodies.⁴⁵

OFGEM considered all bids submitted by suppliers against a set of criteria. OFGEM have described the criteria OFGEM used in the SoLR selection process in the annex to this letter. All responses from suppliers contained confidential information. OFGEM have not released this information as to do so would be likely to prejudice future potential SoLR processes.

⁴¹ OFGEM, Breeze Energy Supply Limited – Notice of revocation of a gas supply licence, 7 January 2020, and OFGEM, Breeze Energy Supply Limited – Notice of revocation of an electricity supply licence, 7 January 2020

⁴² OFGEM, OFGEM protects customers of failed supplier Breeze Energy, 18 December 2019

⁴³ The obligation for a supplier to comply with a Last Resort Supply Direction (LRSD) derives from standard licence condition 8 of the gas and electricity supply licences and is intended to ensure a universal service for Great British energy consumers (for further information on ~~30~~ universal service, see Articles 3(3) of the EU Directives 2009/72/EC and 2009/73/EC).

⁴⁴ In accordance with condition 5 of the Standard Licence Conditions for gas and electricity supply

⁴⁵ Elxon for electricity, Xoserve for gas and the Data Communications Company for enrolled smart meters





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Honouring account balances: As per OFGEM’s SoLR guidance, OFGEM operates a safety net through the SoLR process which protects consumers’ credit balances.⁴⁶ OFGEM recognise that a key concern for customers of Breeze (both existing and past customers who may still have been owed money by Breeze) would be whether their credit balances would be honoured. Indeed, after ensuring continuity of supply, protecting consumers’ money (both existing and past customers), was one of the most important factors in OFGEM’s decision. Of the submissions OFGEM received from suppliers, a majority – including British Gas – confirmed they would honour the credit balances for Breeze’s customers. Given the implications for overall consumer confidence, as noted above, OFGEM also considered whether suppliers would honour the credit balances of former Breeze customers who had switched away but were still due a credit refund. A majority – including British Gas – confirmed they would honour these credit refunds.

Use of the industry levy: The gas and electricity supply licences allow the SoLR to claim for reasonable additional costs incurred in taking on the failed supplier’s customers through an industry levy or Last Resort Supply Payment where OFGEM gives its consent.

Price: SoLR guidance states that the deemed tariff onto which the customers of the failed supplier are moved must not reflect more than the reasonable costs of supply (including costs attributable to the purchase of gas or electricity at short notice), together with a reasonable profit. OFGEM analysed each of the deemed contract prices put forward by the suppliers who submitted offers to be appointed as the SoLR, and calculated a Typical Domestic Consumption Value (TDCV) annual bill figure. OFGEM took the prices being charged into consideration as part of the deal for customers, with a general preference to minimise additional charges that consumers might face, all other things being equal. Of the bidders who volunteered, all offered deemed tariffs that are competitive compared to their own Standard Variable Tariffs, which are below the current price cap.

Customer service: It is to be expected that the customers of a failed supplier, who have been switched through the SoLR process, will have enquiries for their new supplier. Therefore, it is important that the SoLR has a robust approach for managing this increase in customer enquiries and for proactively informing their new customers about their new supply arrangements and available options. In addition, to ensure a smooth transition for customers of the failed supplier, a SoLR will need to have adequate systems and processes in place for managing a large volume of new customer and supply point data in a timely way.

Ability to supply gas and electricity and industry processes: It is essential that the SoLR can comfortably manage the extra costs arising from sourcing the energy required to supply the failed supplier’s customers without jeopardising supply to their existing customers. A range of relevant factors which indicated the ability of the suppliers to absorb these costs, including:

- access to working capital and any guarantees in place
- access to the relevant wholesale markets and products and management of wholesale energy trading and balancing
- the amount of headroom the bidder has – ie the degree to which they have already covered their liabilities (in terms of energy) for this winter and the rest of the year, and
- their strategy to cover the new energy they will need to buy to cover the demand of Breeze’s customers.

⁴⁶ published in June 2016, a copy of which is available here: OFGEM, Our proposed approach to dealing with supplier insolvency and its consequences for customers, 13 June 2016





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OFGEM considered that British Gas provided a sufficient explanation of its capacity and capability to manage the purchasing requirements relating to Breeze's customers. In addition, British Gas have a history of adequate compliance with industry code requirements for gas transportation and electricity settlement and distribution, and smart metering.

3.1.1.3 Stakeholder Analysis, Roles and Responsibilities

OFGEM's duty is to assure continuity of supply for all customers and therefore plays a central role when revoking supplier's licence and appointing Suppliers of last resort. Other parties in the market are obliged to support these roles by their own licence conditions.

Supplier is licensee with OFGEM

Secretary of State, OFGEM will seek the Secretary of State's permission to apply to the court for an energy supply company administration order

Role TSO, have to provide sufficient customer data to OFGEM to facilitate the SoLR appointment process; In the unlikely event that SoLR makes a claim for additional cost, TSO makes a levy on his charges

Role DSO, have to provide sufficient customer data to OFGEM to facilitate the SoLR appointment process; In the unlikely event that SoLR makes a claim for additional cost, DSO makes a levy on his charges

Role Market facilitator, Elexon is the market facilitator. Its is governed by a so called BSC panel, consistent of market players and GridCo's. However, OFGEM has the ultimate decision-making power related to market rules & facilitation.

3.1.1.4 Challenges & barriers (pre-requirement for actively operating SoLR & existing regulatory inadequacies and market failures)

Notwithstanding its undoubted utility, the SoLR regime was devised as a safety net and, as the name suggests, a last resort. However, the low bar to entry has contributed to a marked increase in the number of insolvent suppliers and, as a result, necessitated use of the safety net more and more frequently. With a view to reducing instances of supplier insolvency and, therefore, cause to resort to the SoLR regime, OFGEM's new proposals seek to strengthen the licensing regime, as well as raise standards across suppliers, and reduce suppliers' and consumers' exposure to risks related to supplier failure. Proposed new rules for existing suppliers would enable OFGEM to request independent audits of suppliers' financial status and customer service operations. As part of the auditing measures, checks would be introduced for growing suppliers before they hit certain consumer number thresholds in order to ensure that those suppliers have sufficient operational capacity to effectively serve their customers. Currently, OFGEM proposes that suppliers demonstrate they have appropriate resources for growth and can satisfy relevant regulatory obligations when customer numbers reach 50,000, 150,000, 250,000, or 500,000 - 800,000.

OFGEM proposes bolstering current 'fit and proper' requirements for suppliers, with increased scrutiny of the fitness of those in senior management positions – for example, new checks would look for any previous instances of insolvency and / or any disqualification from acting as a company director. In addition, there would be greater scrutiny upon a change of control of supplier, with suppliers obliged to notify OFGEM should a change in control take place. The proposals also introduce a new openness and



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cooperation principle, requiring suppliers to maintain a constructive relationship with the regulator.⁴⁷ OFGEM intends to introduce rules to minimise the costs of mutualisation for other suppliers in the event of a supplier's failure by requiring suppliers to arrange for the protection of a minimum of 50 per cent of customer credit balances in the event of insolvency.

Methods of protection considered by OFGEM include parent company guarantees, third party guarantees, insurance schemes, principles-based cost mutualisation protections, and a requirement to set aside funds in an escrow account. It remains to be seen whether OFGEM's proposals effectively stem the growing tide of failed energy suppliers and, in doing so, reduce the use of the SoLR regime. What is clear, however, is that the changes proposed by OFGEM represent a significant tightening with respect to the regulation and oversight of energy suppliers. As such, it is imperative that suppliers take time to properly digest the plans. Those energy suppliers considering the SoLR regime as a means through which to acquire a failed supplier's customer base must ensure that they understand the process, as well as the various obligations to be undertaken and their potential impact on the business.

The SoLR process is unique to the administration of energy companies and, whilst still rare, energy company insolvencies have increased in frequency in the last few years. With the growing socioeconomic uncertainty surrounding Brexit and the ongoing open market for small companies to challenge established providers, this pattern is unlikely to change in the near future. Energy companies and insolvency practitioners need to be aware of the additional steps required, for example, engagement with OFGEM, prior to the appointment of administrators and to build these factors into their insolvency planning at the earliest possible stage.

3.1.2 Italy

3.1.2.1 Regulations

The economic conditions provided for the supplier of last resort service differ in relation to the customer supplied. In general, the following prices will be applied:

- For non-disconnectable customers: the rates provided by ARERA for the gas protection service (with a retail sale quota component "QVD" equal to that defined for apartment buildings with domestic use) plus the β parameter defined in the auction phase and the additional INAI⁴⁸ fee for expenses related to arrears referred to in paragraph 31a.4 of the Integrated Text on the retail sale of natural gas and other gases distributed through urban networks (TIVG);
- For domestic customers and apartment buildings with domestic use and annual consumptions of less than 200,000 cubic metres: the rates provided by ARERA for the gas protection service plus the β parameter, starting 6 months after activation of the service;
- For all other customers: the rates provided by ARERA for the gas protection service (with a retail sale quota component "QVD" equal to that defined for apartment buildings with domestic use) plus the β parameter.

⁴⁷ <https://www.reedsmith.com/en/perspectives/2020/02/tighter-rules-for-energy-suppliers-as-ofgem-aims>

⁴⁸ Fee expressed in euro / GJ, to cover charges relating to the arrears of customers to whom the services of last resort are provided



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The billing of the supplier of last resort service shall be governed by the provisions laid down by ARERA in art. 31 a of the TIVG. Billings starts within three months from entry into the supplier of last resort service and continues on a monthly basis.

The "Default Distribution Service", similar to the supplier of last resort service, is activated by the authorised regional distributor in response to some particular situations, due to which a customer is left without a supplier, yet remains connected to the network and therefore able to continue consuming gas. In such cases the supply of gas is assigned to a specific supplier selected by the Single Buyer by tender (as is the case with the default distribution supplier "FDD"), which operates in accordance with the provisions of the ARERA, also with regard to the economic conditions to be applied. The default distribution service can be activated;

- For arrears, with regard to domestic customers, apartment buildings with domestic use and annual consumption of less than 200,000 scm and customers with different uses and annual consumption of less than 50,000 scm;
- For reasons other than arrears, with regard to apartment buildings with domestic use and annual consumption of more than 200,000 scm and customers with different uses and annual consumption of more than 50,000 scm;
- In all cases where the requirements for activation of the "supplier of last resort service" are met but the service cannot be activated.⁴⁹

3.1.2.2 How is SoLR Selected & Appointed

Legislative Decree n. 93/11 establishes, also based on the provisions of Article 30, Paragraph 5 and 8 of Law n.99, of 23 July 2009⁵⁰, which criteria and procedures for the supply of natural gas under the service of last resort are to be identified and updated for all vulnerable customers who remain without a supplier for reasons beyond their control.⁵¹

Subject to the changes introduced by Legislative Decree no. 93/11, the service provision of last resort for vulnerable customers who are temporarily without a gas supplier, is provided to customers who are entitled to the protection service (domestic customers - including condominiums with consumption of no more than 200,000 cubic meters per year, utilities related to public service activities, other customers with consumption of no more than 50,000 cubic meters per year) by operators selected on the basis of competitive procedures run by Acquirente Unico (AU).

The decree of the Italian Minister of Economic Development of July 31, 2014, in the implementation of the provisions of Legislative Decree 164/00, as subsequently amended and supplemented, defined the guidelines for the Authority in order to identify the criteria and methods for the supply of natural gas, as part of the service of last resort, for the thermal years 2014-2015 and 2015 to 2016. The ministerial decree, among other things, determined that the Authority set forth the appropriate guidelines for AU for selecting, via public tender, the supplier of last resort (FUI), to be concluded in time for the service to be operational from October 1, 2014. The Authority has therefore issued guidelines to AU for the trial of procedures of public evidence, for the period October 1, 2014 – September 30, 2016, for the identification

⁴⁹ <https://www.enel.it/en/supporto/avvisi/servizio-fornitura-ultima-istanza>

⁵⁰ "5. In order to ensure high levels of protection for end customers in the gas sector, the company Acqui entry single Spa as a supplier of last resort guarantees the supply of gas to domestic end customers with annual consumption up to 200,000 cubic meters in continuous conditions, safety and efficiency of the service." "8. Within sixty days from the date of entry into force of this law, the Minister of Economic Development, having consulted the Authority for Electricity and Gas, adopts the guidelines to which the Acquerello single Spa company complies in order to safeguard the safety and affordability of gas supplies for end customers referred to in paragraph 5. A subsequent decree of the Minister of Economic Development establishes the date for the assumption of the function of guarantor of the supply of gas by the company Acquerello single Spa the end customers referred to in the same paragraph 5" <http://www.parlamento.it/parlam/leggi/090991.htm>

⁵¹ MEDREG Assessment Of Natural Gas Competition And Market Prices Within Medreg Member





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of suppliers of last resort. At the same time, for the same period, the Authority assigned to Acquirente Unico the task to manage the tendering procedures for the identification of the default natural gas distribution service, aimed at ensuring the balance of the distribution network, in relation to the take outs of natural gas made directly by the end customer holder of the delivery point, without a supplier, to whom the prerequisites for the activation of the supplier of last resort are not applicable, or when in any case it is otherwise impossible the activation (Resolution 418/2014/R/gas).

Based on the guidelines provided by the Authority, in the month of September 2014, Acquirente Unico has carried out the tendering procedures for the identification of suppliers of last resort and default distribution service of natural gas for the thermal years 2014-2016. For the last-resort supply service, Eni S.p.A. and Enel Energia S.p.A. were the winners, while for the default service, winners were Hera Comm S.r.l. and Enel Energia S.p.A.⁵²

3.1.2.3 Stakeholder Analysis, Roles and Responsibilities

The Government (Ministries such as the Ministers of Economic Development, Economy and Finance, Labour and Social Policy): develop strategies, prepares, and publishes policy documents, evaluates the recommendations prepared by the Regulatory Authority and introduces new mechanisms.

NRA: Italian Regulatory Authority for Energy Networks and Environment, ARERA, is responsible from making the mechanisms operational defined by the Government. The Authority determine the most effective procedures of implementation, taking into account the need to maintain the economic equilibrium of companies. ARERA establishes the standard offer price at the beginning of each regulatory quarter. The Authority also laid down the criteria to implement an independent price comparison tool operated by the Single Buyer which would help household and small enterprises to assess the merit of the different electricity offers that are available on the market.

Moreover, ARERA develops provisions and consultations regarding retail market, switching procedures etc. and takes measures regarding the marginal consumption cost of gas, more transparent and clearer invoices, and more stringent rules on brand unbundling etc. for better functioning of the market.

DSO: Domestic customers - including condominiums with consumption of no more than 200,000 cubic meters per year, utilities related to public service activities, other customers with consumption of no more than 50,000 cubic meters per year are under SoLR scheme. In case of necessity, DSO supplies the gas.

Retailers: Last resort service is being assigned to retailers selected through open auctions.

3.1.2.4 Challenges & barriers (pre-requirement for actively operating SoLR & existing regulatory inadequacies and market failures)

In Italy, SoLR is determined via a tender in natural gas market. With the functioning competitive market and market-based SoLR selection procedure, Italy is a good example of practice in terms of retail markets. However, still there are problems for households to understand functionality of the liberal market. Therefore, main challenge seems to increase household perception about functional liberal market and further deepen overall gas market liberalization in the country.

⁵² <http://www.ocsit.it/sites/default/files/allegati/pagina/AU%202015%20Annual%20Report.pdf>



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3.1.3 Spain

3.1.3.1 Regulations

Since July 1st 2009, last resort tariffs (TUR 1 - TUR 2) are applied only consumers connected to gas pipelines with a pressure equal to or smaller than 4 bar and annual consumption of less than 50.000 kWh. In December 2016, the following last resort suppliers are appointed:

- Endesa Energía XXI, S.A.U
- Gas Natural SUR SDG, S.A.
- Iberdrola Comercializacion de Último Recurso, S.A.U
- EDP Comercializadora Último Recurso, S.A.U.

If a customer is not eligible to be supplied at TUR and if he/she is without any supply contract, then he/she is allowed to be supplied by last resort suppliers at TUR during one month, according to the Royal Decree 10412010.

Royal Decree 104/2010, of February 5, which regulates the start-up of last resort supply in the natural gas sector, published by Ministry of Industry, Tourism and Commerce, based on the Law 34/1998, of October 7, on the Hydrocarbons Sector, amended by Law 12/2007, of July 2, to adapt it to the provisions of Directive 2003/55/EC of the European Parliament and of the Council, of June 26, 2003, on common rules for the internal natural gas market, establishes the disappearance of the tariff system and the creation of a last resort tariff.

The Royal Decree says that it is necessary to specify the legal regime to apply to consumers with the right to avail themselves of the last resort rate, as regards the determination of the prices to be paid by those consumers who temporarily do not have a supply contract in force with a supplier. Also, it says the measures are established to be applied by the distribution and supply companies so that the transfer to last resort supply is compatible with the promotion of competition.

Some of the principles set by The Royal Decree are as the following:

- Consumers covered by a last resort tariff will be considered as consumers in the liberalized market.
- Taking advantage of the last resort rate may in no case be conditioned on the contracting of any services other than the supply of natural gas offered by the last resort supplier. The last resort supplier belonging to the business group that owns the network in a distribution area, or in the event that it does not exist, the last resort supplier with the highest market share in the autonomous community, must attend to the supply for those consumers who, without having the right to avail themselves of the last resort rate, temporarily lack a supply contract in force with a supplier and continue to consume gas.
- The price to be paid by consumers without the right to avail themselves of the last resort rate, for the gas consumed during the period in which they do not have a contract in force with a supplier, will be set by order of the Minister of Industry, Tourism and Commerce, prior agreement of the Government Delegate Commission for Economic Affairs.



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- Last resort suppliers will keep separate accounts in their accounts, differentiating income and expenses strictly attributable to the supply made to those consumers covered by the last resort rate.
- Maximum consumption threshold of the last supply recourse no longer has the right to avail themselves of the last resort rate. In the event that a consumer connected to service pressure networks less than or equal to 4 bars and benefiting from the current last resort rate, exceeds the maximum limit established to benefit from them, without having formalized a new contract supply with a free-price supplier, the last resort supplier supplying must continue to serve for a maximum period of three months. The price to pay for said supply will be the rate of last resort that would have been applied previously. Once this period has elapsed without the consumer having a supply contract in force with a supplier, the provisions referred above (on the order of the Minister of Industry, Tourism and Commerce, prior agreement of the Government Delegate Commission for Economic Affairs) will apply.

The Last Resort Rate (TUR, in Spanish) for gas is designed to protect small consumers, which is the gas equivalent to the regulated PVPC electricity tariff, but it must not be confused with the Rate Subsidy. TUR is a rate for natural gas regulated by the CNMC and the Ministry of Industry. There is a single rate throughout Spain: no matter where you live, the conditions are the same. The TUR specifies the maximum and minimum prices that gas suppliers can charge you. This rate cannot compete with prices on the open market for gas, as with electricity, for gas there is also an open market and a regulated market.

Natural gas users have the option of choosing between two last resort rates: one aimed at small consumers (TUR1) and the other designed for those with higher gas consumption needs (TUR2).

- TUR1: intended for those with annual consumption that is equal to or less than 5,000 kWh of natural gas, with a supply pressure equal to or lower than 4 bars. Under TUR1, the fixed component of your bill (what you pay every month regardless of your consumption) is more economical, while the variable component (the gas you consume) is higher.
- TUR2: designed for consumers of between 5,000 and 50,000 kWh of natural gas per year, with a supply pressure equal to or lower than 4 bars. Under TUR2, the fixed component of the bill is higher, but the variable component is more economical.

In general, domestic consumers are connected to a natural gas network with 4-bar pressure, and their consumption is nowhere near 50,000 kWh. A Spanish household that uses gas for hot water and heating has an annual consumption of around 9,000 kWh. On the other hand, if the heating system is not powered by natural gas, consumption drops to 3,000 or 4,000 kWh per year.

To be eligible for the TUR you must consume less than 50,000 kWh of natural gas per year. This is a very high figure for domestic consumers, representing 5 times more than what an average household with gas-powered heat and hot water usually uses.

Although the easiest way to explain the Last Resort Rate for gas is by comparing it to the Social Rebate for electricity, the fact is, there are some significant differences:

- The electricity Social Rate is for those with limited resources (and large families), whereas anyone who does not surpass the annual consumption limit is eligible for the TUR.





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- The Social Rate applies a discount on the regulated PVPC electricity rate, whereas the TUR is the rate itself, with its own prices.
- The Social Rate would be more comparable with the Thermal Social Bonus. Both are designed to help people in need, although they are different with respect to electricity, it is a discount that applies to all bills; the thermal bonus is a single annual payment that varies depending on where you live.⁵³

3.1.3.2 How is SoLR Selected/Appointed

Appointment of the suppliers of last resort (comercializadores de último recurso) has been set out by the Royal Decree-Law 6/2009, Of 30 April, which Adopt Certain Measures in The Energy Sector and Approving the Social Bond. According to this Royal Decree-Law;

- The natural gas companies that assume the obligation to supply of last resort in the Peninsular and the Balearic Islands from the time of its integration in the gas system, in accordance with the provisions of article 82 of the law 34/1998, of October 7, the hydrocarbons Sector, will be: Endesa energy, S. a., Natural gas services, S. a., Iberdrola, S. a., Naturgas energy marketer, S. A.U., Union Fenosa Comercial, S. L.
- The supply company that will take over the supply obligation of last resort in the Canary Islands, from the moment of the entrance of the natural gas, will be Endesa energy, S. a.,
- The Government may revise the companies that assume the obligation to supply of last resort in accordance with the provisions of article 82 of the law 34/1998, of October 7⁵⁴.

SOLR price (TUR) is set by the regulator, CNMC in Spain.⁵⁵ The Ministry of Industry, Tourism and Commerce also has a role in the process along with CNMC.

3.1.3.3 Stakeholder Analysis, Roles and Responsibilities

Last resort suppliers are those responsible for supplying the customers defined to be eligible, at the rate called TUR. The Ministry of Industry, Tourism and Commerce and CNMC regulates the price to be paid by consumers at the last resort rate. The Government may revise the companies that assume the obligation to supply of last resort according to the Royal Decree-Law 6/2009.

⁵³ <https://www.endesa.com/en/discover-energy/blogs/last-resort-rate-for-gas>

⁵⁴ "Article 82. Last resort suppliers.

The Government will determine which suppliers will assume the obligation of last resort suppliers. In addition to the rights and obligations established for suppliers in article 81, gas suppliers who have been designated as last resort suppliers must attend to the natural gas supply requests of those consumers that are determined, at a maximum price established by the Minister of Industry, Tourism and Commerce, prior agreement of the Government Delegate Commission for Economic Affairs, which will be considered a last resort rate. Likewise, in the event that a supplier does not comply with some of the obligations established in letters d), e), f), g) and h) referred to in article 81.2 of this Law, or does not comply within the terms that other payment obligations are established against the gas system, the Ministry of Industry, Tourism and Commerce will determine, after a hearing and in a motivated, objective and transparent manner, the transfer of the customers of said supplier to a supplier of last resort, without that such circumstance implies extraordinary burdens for the last resort supplier. Likewise, it will determine the supply conditions of said customers. The foregoing shall be understood without prejudice to the penalties that may arise in accordance with the provisions of Title VI of this Law."

⁵⁵ ACER/CEER - Annual Report on the Results of Monitoring the Internal Electricity and Natural Gas Markets in 2017 – Consumer Empowerment Volume



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In Spain, the SoLR are appointed by the government, which is represented by The Ministry of Industry, Tourism and Commerce and CNMC. The companies appointed as SoLR are obliged to serve as the function of SoLR, which makes them the crucial stakeholders of the process.

The share of roles between government and CNMC puts questions on the regulatory structure of Spain, as it has been discussed in section 1.1. CNMC must be the sole price setter in Spanish natural gas market for distribution tariffs and last resort supply tariffs, and therefore, it also can be designated to appoint the suppliers to serve as SoLR solely. However, this is not regarded as essential but preferable, and less crucial compared to core regulatory actions such as tariff design.

3.1.3.4 Challenges & barriers (pre-requirement for actively operating SoLR & existing regulatory inadequacies and market failures)

The circumstance in which a household natural gas customer may turn to the SoLR is shown at the table below in Energy Community Regulatory Board (ECRB) countries. In 7 countries each, bankruptcy and licence revocation, customer may turn to SoLR. In 5 countries, there is no SoLR. In 4 countries each, customer not finding a supplier and not choosing a supplier at the market opening may turn to SoLR. In 3 countries, customer dropped by the supplier due to non-payment and in 2 countries, customer whose supply contract expired may turn to SoLR.

Table 3.1: Circumstances vs Number of Countries⁵⁶

Circumstance	Number of countries
Customer did not find supplier	4
Customer dropped by supplier due to non-payment	3
Supplier went bankrupt	7
Licence of the supplier revoked	7
Customer not choose supplier at the market opening	4
Supply contract expired	2
Other	1
No SoLR	5

The principles for calculation of TUR is set by the Act 1212007 as:

- Single tariff for the whole country.
- Cost reflective (incomes enough to cover expenses).
- Additive structure: energy costs, access tariffs and commercialization costs.

The energy component of the TUR is calculated every 3 month and changes with a formula that includes;

- The crude oil quotation,
- The prices of natural gas at the National Balancing Point (NBP) of the United Kingdom and the Title Transfer Facility (TTF) of the Netherlands markets,
- A commercial margin.

By 31 December 2016, the number of consumers supplied at a free-market price was 6.008.531 (78,31% of all consumers), while the number of consumers supplied at TUR was 1.664.131 (21,69% of the consumers, however consumed 2,46% of the total volume).⁵⁷

⁵⁶ Source: ECRB Monitoring Report on the Functioning of Gas and Electricity Retail Markets in the Energy Community in 2018, December 2019

⁵⁷ Spanish Energy Regulator's National Report to the European Commission 2017



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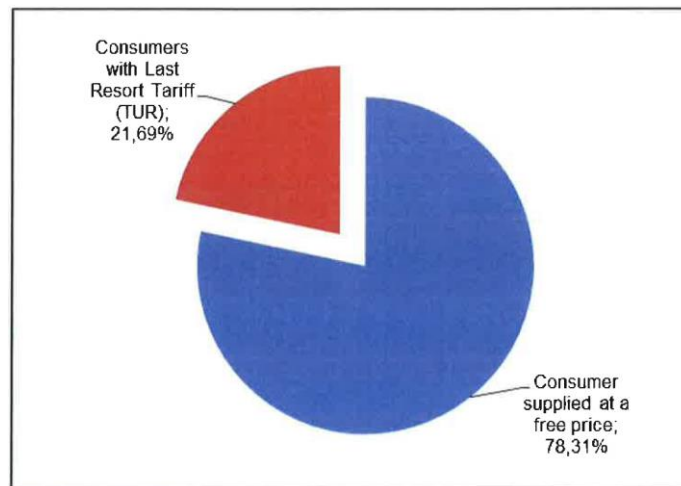


Figure 3.3: Last Resort Tariff Scope in Spain⁵⁸

Looking closely to design principles of the TUR and the formula with which the TUR changes, it is compatible with the regulatory principles and the conditions to be eligible for being supplied at TUR is considered to be in line with the free market principles. Also the figures of percentage of the consumers supplied at a free market price and that of the supplied at TUR show that Spanish natural gas market is functioning mostly based on liberalized market principles. Therefore, considering the legislation and regulation along with the figures, SoLR mechanism in Spain is deemed to be a well-designed and well-practiced example.

3.1.4 Turkey

3.1.4.1 Regulations

There is no direct definition on supplier of last resort or last resort supply in Turkish legislation. Currently, competition is not sufficiently achieved in Turkish natural gas market, DSOs function as the de facto SoLR. In the same way, BOTAS is the de facto SoLR for the natural gas supply to DSOs. Once a competitive structure is built, SoLR will be a major task to be regulated and legislated by the relevant authorities.

Article 9 of the law 4646 includes the provisions “In case it becomes compulsory to annul inner-city natural gas distribution license, the Board annuls the license after taking necessary precautions beforehand. Provisions regarding the practice is set out under a by-law”. As the DSOs are acting as the last resort supplier along with being the distribution operator, this provision is relate to what EMRA will do in case a DSO cannot fully accomplish its tasks, or a clear and imminent danger of failure is envisaged by EMRA. The referred by-law, which is thought to be a separate and detailed one, is yet to be published by EMRA. There are instead following provisions at Natural Gas Market Distribution and Customer Services By-Law to meet mentioned provision of the law:

Article 22 (procedures before license granting): “In the principal agreement of the prospected license holder; provisions that it is accepted by the company that EMRA can replace board of directors or those who manage the company, in case it is a joint-stock company the shareholders general assembly and/or those manage the company (if joint-stock company) temporarily or constantly, partially or as a whole, if annulment of the license becomes compulsory, and for protection of the customers and sustainability of the service, should be included.”

⁵⁸ Spanish Energy Regulator's National Report to the European Commission 2017



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Article 32 (Sale and transfer of the network): “If license annulment becomes compulsory within the license period, or the license holders waives from license holding upon consent of the EMRA Board, network is sold by the tender to be carried out by EMRA...”

Article 34 (Measures to be taken by EMRA): “If license annulment becomes compulsory, EMRA can replace board of directors or those who manage the company, in case it is a joint-stock company the shareholders general assembly and/or those manage the company (if joint-stock company) temporarily or constantly, partially or as a whole, to guarantee execution of the activities under the license and operation of the network in order to protect customers and ensure sustainability of the service. Provisions that license holder accepts these issues are included in the distribution license and in the principal agreement of the DSO. In case the DSO goes bankrupt, license automatically terminates, EMRA take necessary precautions, all the assets those are assurance or assurance-like are recorded as revenue by EMRA”.

3.1.4.2 How is SoLR Selected/Appointed

As no definition made, there is not a selection/appointment methodology defined either. However, the above-mentioned provisions of the law and the by-law, are to some extent within a de facto SoLR selection procedure.

3.1.4.3 Stakeholder Analysis, Roles & Responsibilities

For the current scheme, it is not correct to refer institutions as stakeholders, however, as for the prospected future scheme, probable stakeholders are DSOs, EMRA and MENR with regard to SoLR. Also, being the biggest player of the natural gas market, BOTAŞ can assume some roles throughout the whole process.

3.1.4.4 Challenges & Barriers (pre-requirement for actively operating SoLR & existing regulatory inadequacies and market failures)

For the current natural gas market of Turkey, lack of competition and well-functioning retail market is the biggest barrier, which itself is a concern for Turkey, leaving the SoLR issue alone. Therefore, throughout this report, challenges regarding the existing market structure have been mentioned when needed.

For the regulatory side, both the infrastructure of legislation and regulatory competency is highly developed. The problem arises from the industry structure, for the overcome of which legal steps towards separation on BOTAŞ, liberalization of natural gas import and changes in pricing methodology are required, in basic terms.

Eventually, the problem is not a regulatory problem in Turkey rather it is connected to political will towards a market structure that has been described in the articles of law no. 4646 in 2001. After a competitive natural gas market is set up, SoLR can be resolved by highly experienced regulatory authority of Turkey.

3.1.5 Gap Analysis and Recommendations

As the regulatory definitions are yet to be completed in Turkey and a mechanism to select/appoint is not set up, there is a complete gap between EU examples and Turkey. For that reason, it is recommended to separate actions to be taken into two parts for Turkey:



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1- Phase 1: Until natural gas market functions with retail competition, appoint DSOs as the SoLR in their regions. In that manner, further regulation is needed to define what steps and how will they be in case the DSO fails serving the customers. Article 9 of the law 4646 includes the above-mentioned provision and EMRA has not yet published a detailed by-law to regulate this issue in detail, rather several provisions included in the Natural Gas Market Distribution and Customer Services By-Law.

So, for the first phase, a by-law should be published, under which EMRA may appoint BOTAŞ or any DSO as the SoLR for the transitory period before a new license is issued. In the prospected by-law, EMRA should regulate in which circumstances a distribution license will be annulled. MENR can be a stakeholder during this phase for the coordination of the process.

2- Phase 2: Once the retail competition is achieved in Turkish natural gas market (in which eligible customer limit is zeroed or set to a little volume, DSOs are unbundled, bilateral contracts prevails in the supply of natural gas and spot natural gas market functions), EMRA can appoint SoLR for the failure of supplier, for customer cannot find a supplier, supplier goes bankrupt, licence revoked and so on. In this phase, suppliers and EMRA should be the stakeholders of the process.

Table 3.2: Phases Recommended for Natural Gas Framework in Turkey

Phase 1	Phase 2
Define last resort supply for DSO failure	Define last resort supply as a function of selected/appointed supplier (Not DSOs)
Set out rules in which a distribution license is annulled (separate by-law)	Set out rules in which a customer is allowed to be supplied by SoLR
Set out rules for selection of the new license holder (separate by-law)	Design principles of SoLR tariff
Define all measures to be taken to protect customers and provide sustainability of the distribution service clearly and in detail (separate by-law)	Set out rules for selecting/appointing a SoLR

In the Phase 2, SoLR is a party which bids for last resort natural gas price in a competitive procedure, in which final price is well above market prices in order to ensure that customers are incentivized through bilateral agreements, at the best possible prices and conditions with best performing suppliers. If they do not choose suppliers in that manner of searching for best offers from best performing suppliers, they should be facing expensive natural gas consumption, as a result of not switching from SoLR, or not sufficiently putting effort for finding reputable suppliers and so on. It is obvious that the risk of facing expensive prices is the most effective motive for customers to participate in the free market as active players. Eventually, being selected upon best offer to EMRA in the tender of SoLR, winner of the tender will be serving with the lowest of the expensive prices compared to prices based on the market prices. Tenders can be carried out for every calendar year or a couple of years, and for certain distribution regions or for whole country (in the latter case, more than 1 SoLR can be appointed).

In the cases which customers are allowed to purchase natural gas from SoLR can be not finding a supplier, bankruptcy of the supplier, license revocation, etc. and certain coefficients can be applied on the SoLR prices based on the reason of being supplied by the SoLR (for instance, lower price in case of bankruptcy but higher price for not finding a supplier), customer type (for instance lower price for households, higher





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price for larger customers), duration (lower price at the beginning and higher at continued supply) etc. The excess revenue earned by the SoLR can be partially transferred to a special fund to be designed for certain purposes (for instance for supporting vulnerable customers).





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