SCOTTISHPOWER

Director of Regulation

Smart Metering Implementation Programme
Regulatory Design Team
Department of Energy and Climate Change
3 Whitehall Place
London,
SW1A 2AW

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Dear Sir/Madam

CONSULTATION ON DRAFT DCC PROHIBITION ORDER

Thank you for this opportunity to respond to your consultation on the draft DCC Prohibition Order.

In broad terms we think that the draft Order is appropriate, though we think that a number of enduring and temporary exemptions will be required. This is an appropriate structure which is of course followed in the Electricity and Gas Acts themselves.

Our responses to the specific questions in the consultation document are provided in the appendix to this letter.

Should you wish to discuss any aspect of our response or the matters raised, please do not hesitate to contact me or

Yours faithfully

Director of Regulation

Appendix

Q1. Do you think any party other than DCC would be captured by the Prohibition Order as set out? If you consider other parties would be captured please identify them and indicate whether you consider this a short term or long term issue.

The proposed prohibition order would prohibit '*making arrangements with each domestic supplier to provide a service, for such suppliers, of communicating relevant information to and from smart meters installed in domestic premises.*' We think that this is broadly an appropriate definition, though enduring and transitional exemptions will be needed and should be made at the time of the Prohibition Order.

We think the following parties (other than the DCC) might be captured by the definition:

a) companies providing remote communications services to advanced meters at domestic premises;

b) companies providing remote communications services to smart meters before their migration to DCC;

c) possible future Energy Service Companies (ESCos) whose business model involves communication of information via the internet;

d) parties involved in harvesting electronic key meter data and sending back instructions via the vending mechanism – see response to Question 2 below;

e) smart meter installers, who may use hand-held devices to record data as part of initial meter set-up; and

f) any company providing hardware or software services to all suppliers where such services constitute part of the chain receiving data from (and sending instructions to) the DCC.

DECC argues that the risk of (a) and (b) being caught by the definition is reduced because parties must be making arrangements with all active domestic suppliers to be caught by the definition[1]. However, given the effect of switching in mixing up meters and the need for interoperability, we consider it prudent to include specific exemptions so that the regime is fit for purpose from day one.

In the case of (c), it is possible that companies might develop business models where they obtain energy consumption information (with the consumer's permission) via the IHD/home network, and then provide this information as part of a value added service to suppliers. Again, it may be prudent to amend the terms of the prohibition order to exclude such circumstances.

In the case of (d) to (f) we note that the information does not appear to have to be communicated to or from the smart meter via an electronic communications network, nor does it appear that the communication with the meter needs to be direct and "all the way" from supplier to meter rather than a link in the chain.

Overall, we welcome an approach that provides for reasonable flexibility in the arrangements, although we recognise that this has some potential to increase the risk of

[1] Condoc para 61

unintended consequences and of inadvertently capturing other parties. For this reason there needs to be a framework of exemptions, possibly covering the six cases referred to above. We think a draft list of exemptions should be the subject of a brief consultation as soon as it is available.

It is not clear that 100% smart meters will be achieved in any reasonable time period because of access and/or communications problems in individual cases. Therefore we suspect that most categories of exemption will have to be open-ended in time at this stage, but that the Government should retain the right to amend the DCC exemption order as circumstances require.

Q2 Do you have any views on the definition of a smart meter set out in the draft Order?

The draft order defines a smart meter as an '[*electricity*] *meter and any devices (a) which are associated with or ancillary to that meter; and (b) which enable information to be communicated to or from the meter using an external electronic communications network'*.

We understand the benefits of a broad definition of a smart meter that is independent of the definition of the SMETS that is in force for the time being and also captures non-compliant smart meters that the DCC can communicate with. However, the definition includes electronic key meters and non-compliant smart and potentially some other advanced meters.

Data from electronic key meters is collected on the payment medium (the 'key) and subsequently transferred to the supplier, via an electronic communications network, when the key is inserted in a complementary device operated by the agent, during credit top-up. The credit top-up process may also be used to download information from the supplier to the key, which then updates the meter when the key is next inserted.

A necessary corollary of such a wide definition will be to have a clear exemption for prepayment systems, which could perhaps exclude systems where the communication is in part carried on using a key or card which physically transfers data from the meter to an electronic communications network.

However, there may be benefits in excluding from the definition of smart meter meters which use such a card or key as their sole means of transferring relevant information. This is because the DCC licence conditions are likely to regulate certain aspects of the use of smart meters and excluding existing prepayment from the statutory definition of smart meters could help clarify that these licence conditions do not apply to those arrangements.

An exemption may also be needed for some forms of advanced metering, but it would make less sense to adjust the definition of a smart meter for this point.

Q3 Do you have any further comments on the approach being adopted to structuring the licensable activity?

One of the key decisions made by DECC in the very early stages of the SMIP was that all communications to and from smart meters must be through the DCC and that suppliers or other parties would not communicate with smart meters directly. We think this is an important principle as it will reduce the risk that information security is compromised.

Under the proposed licensable activity, a person wishing to communicate with smart meters either (a) otherwise than in pursuance with an arrangement with all active domestic suppliers

or (b) in relation to non-energy supply information (including information on the control or programming of the meters) does not require a licence.

This is a relatively narrow approach to the licensed activity, and can be compared with a broader prohibition subject to defined exemptions. This broader approach has been the normal pattern, because it allows for adjustment of the precise scope of licensing in the event of developments without the need to seek new primary legislation.

This should not matter if DECC is confident that the narrow proposal will ensure that the DCC needs to get a licence (this seems a reasonable assumption) and that any other connection with smart meters does not need to be policed through the prohibition because it can be controlled in other ways.

However, we are concerned to ensure that DECC does not underestimate the information security risk that may be posed by parties connecting to the smart communications network. In particular, the risk that parties are unwittingly used as vehicles for unauthorised access to the DCC, the WAN and, ultimately, Britain's domestic energy meters. In our view, such concerns are best addressed through a rigorously controlled and enforced assurance regime with which all parties wishing to communicate with smart meters must comply. It is important that DECC is confident that this can be established in the context of a narrow prohibition order.

With reference to paragraph 54 of the consultation document, the conclusion that regulatory oversight is only necessary in respect of information 'related to the supply of electricity or gas (as relevant)' does not appear to recognise that regulatory intervention and approval is necessary before an 'extra-industry' service (i.e. a service not related to the supply of electricity or gas) can be established by the DCC. Again, this will probably be addressed through the terms of the DCC licence and the drafting of the Smart Energy Code, but we nonetheless make the point here for the avoidance of doubt.

Q4 Do you have any comments on the draft licensable activity as set out in article 4 of the draft Order (Annex 2)?

We would merely reiterate our suggestion that the definition of a smart meter might usefully exclude a prepayment meter using a card or key which is removed from the meter in order to be connected to an electronic communications network.

Q5 Do you have any comments on the conclusions set out in respect of the proposed consequential amendments or on those assessed as unnecessary?

At a high level, we agree with the conclusions regards proposed consequential amendments, as set out in section 3.2 of the consultation document.

We wonder whether the constraints on parties holding both DCC and supplier/shipper licences can in fact be given effect in the licence conditions rather than the primary legislation. This is because the granting of the licence is by the Secretary of State or the Authority as the case may be and it is not clear that a condition within a licence so granted (which places obligations only on the licensee) can be effective in preventing the Secretary of State or Authority from granting a further licence.

Q6 Do you have any comments on the consequential amendments as set out in the draft Order?

In line with our response to Question 5, we broadly agree with the approach taken to consequential amendments in the draft Order, but would make the following observations:

- Electricity Act 1989 section 6 - we note the intention for the Licence Applications Regulations (section 56FC of the Electricity Act) to determine which of the Secretary of State or the Authority operates the process in the period until 2018. However, we wonder whether there should be some statutory back-up for the proposition that there would not be more than one DCC, except for the purposes of handover, and to deal with transitional periods during which, it is currently envisaged, two parties could hold DCC licences.

- Electricity Act 1989 Section 7A – "*...the transfer of the whole or any part of a smart meter communication licence.*" We would question any implication that the communications licence is capable of being awarded in lots.

- Electricity Act 1989 Section 8 (3D) to (3F) – these subsections confer powers on licence conditions to handle the transfer of the DCC functions from one body to a successor in return for appropriate compensation. However, these functions would not be available if the licence had already been revoked or transferred, or had expired. You may wish to consider provisions analogous to section 28(2A) of the Electricity Act which provide for these handover powers to be independent of the continued existence of the licence.

Q7 Do you think that the DCC should be included in the standards of performance framework? Do you have any general views on the regulation of DCC's relationship with consumers?

We do not see any case for DCC to communicate directly with customers (as opposed to customer smart metering systems). Therefore, whether such provisions would be aligned with those currently in place for suppliers or for distributors, we do not consider it appropriate to extend the performance standards provisions in the electricity and gas acts to cover DCC performance.

Q8 Do you consider it necessary for the DCC (or its service providers) to be considered a "statutory undertaker"? Please explain the reason for your answer.

We do not think it necessary for the DCC to be considered a statutory undertaker. Any works to establish the DCC communications network are likely to be carried out by the DCC's Communications Service Providers (CSPs) rather than by the DCC itself. Such CSPs could obtain similar statutory undertaker rights through an application for 'code powers' under Section 106 of the Communications Act 2003. Works to install smart meters would be done by on or behalf of suppliers, who are already statutory undertakers.