



Consumer  
Focus

Campaigning for a fair deal

23<sup>rd</sup> March 2012

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

Dear Consultation Officer

**Consumer Focus response to the Draft Statutory Instrument *The Electricity and Gas (Prohibition of Communications Activities) Order 2012***

We are grateful for the opportunity to respond to this consultation.

We agree with the stated approach to structuring the licensable activity, but have a number of comments regarding the proposed consequential amendments. For full answers to your questions please see the Appendix.

This response is non-confidential and may be displayed on your website. If you have any questions regarding its content please contact me c

Yours faithfully

Policy Manager, Energy Regulation

## **Appendix 1: Answers to specific questions**

### **1. 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.**

No, we do not think any other party would be captured.

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

Yes. For the purposes of the Order we are pleased that the definition is very broad as this will offer protection to all advanced meters.

However, we would not want the broad definition in the Order to become the definition which is also used to determine whether installed meters are compliant with the obligation to roll out smart meters. As we have discussed extensively in other fora, we would wish that the definition for the purposes of compliance is much more detailed and requires a sophisticated meter at the SMETS 2 level when this has been defined.

### **3. Do you have any further comments on the approach being adopted to structuring the licensable activity?**

No

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

No

### **5. Do you have any comments on the conclusions set out in respect of the proposed consequential amendments, or on those assessed as unnecessary?**

We maintain our view that the DCC should be included in the regime for the handling of consumer complaints in the Consumers, Estate Agents and Redress Act (CEAR) unless a credible alternative that provides equivalent protection to consumers can be found. This is because a failure in the quality or continuity of the DCC service could adversely affect consumers in much the same way that a supplier or network failure could. From a consumer protection perspective, it is therefore important that there are consequences to the DCC were it to fail to do its job properly, and that consumers are compensated for any disruption to the services they receive from it.

We recognise that consumers' day-to-day contractual relationships are with suppliers, not the DCC, and that DCC failures are therefore likely to be interpreted by consumers as supplier failures. Thus, a credible alternative to requiring the DCC to be subject to the CEAR

complaint handling requirements would be for suppliers to hold responsibility on its behalf. If a consumer were to suffer problems resulting from the DCC failing to deliver its services properly they could complain about this to their supplier, and ultimately, take that supplier to the Energy Ombudsman in relation to those (DCC) failings if it failed to resolve them. This would make suppliers responsible for DCC failings but we think this is reasonable – suppliers are effectively already responsible for other subcontractors working for them, and it would create a strong incentive on suppliers to make sure the DCC is fit for purpose.

In the event that suppliers are not willing to take responsibility for DCC performance, we think that there will be a need for the DCC to be subject to the CEAR complaint handling requirements in order to prevent a gap in consumer protection whereby nobody can be held responsible for any service failures.

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

Not beyond those set out at Question 7 below

**7 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?**

Yes, we do think that the DCC should be included in the standards of performance framework. Standards of performance, such as the Guaranteed Standards that Distribution Network Operators have to abide by, serve a useful purpose by setting out clearly the circumstances in which consumers should be compensated for a failure in service and the form that this compensation should take.

However, it is not clear that the DCC will know enough about the consumers it serves to process claims itself. It will be able to monitor what services have or have not been delivered, but it will not know the name of the householders affected or hold any payment processing details for them. It may therefore be the case that any guaranteed standards payments resulting from DCC failures would have to be routed via suppliers. We would expect there to be protections in place to ensure that these monies were passed on.

In addition, the question of whether the DCC will provide any services to consumers themselves has not been resolved and there may need to be standards of performance governing this relationship. It may not always be the case that what constitutes 'good performance' from a supplier's point of view is the same as 'good performance' from a consumer's point of view, and therefore it could be advisable for the Authority to create standards of performance in any case.

**8 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.**

No, we do not consider this to be necessary, as it is not clear in what context the DCC (rather than its contractors) would need to be thus considered.