By Email Only

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Ofgem

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Dear Marzia

**Data Sharing in a Digital Future: Consumer Consent**

Gemserv is pleased to provide our response to this Call for Input. Gemserv has a 25-year long history of providing services to the electricity and gas markets. We are currently providing code management services for the Smart Energy Code, Retail Energy Code and the Independent Gas Transporters Uniform Network Code. Our experience also extends to other international energy markets, notably Ireland and the Middle East. In Ireland we are supporting the Commission for Regulation of Utilities (CRU) with the development of the Smart Meter Data Access Code, including participation in the joint ENSTO-E and EU DSO Entity workshops on Data Interoperability.

Our parent company Talan has deep domain expertise in digitalisation and that capability coupled with our domain expertise in the regulated sector gives us the opportunity to collaborate and explore how digitalisation can transform the sector.

We are very supportive of Ofgem’s work to unlock data sharing in the energy market and encourage the development of innovation and new value for consumers from the adoption of digital technology.

As technology advances apace it is incumbent on all of us to continue the work of the Energy Data Taskforce and unlock the potential benefits and new services for consumers. Gemserv is keen to be an active participant in the conversation to bring our domain experience as well as the digital capability of Talan to the table.

Gemserv agrees that a Consumer Consent solution is required to move the market forward and that directive action is required by Ofgem to enable this.

There are potentially significant regulatory barriers that could impact the implementation of a technical solution and Ofgem should be an enabler in this regard to fully support both the process and development of a single solution.

Data sources are disparate across codes, systems are not integrated and some of the data quality is poor. A scheme to integrate Consumer Consent across ALL data sources would be problematic without support and direction from Ofgem.

The question of consumer motivation around Consumer Consent is fascinating and worthy of further work. Gemserv believes that any changes should be delivered specifically with a measurement of consumer benefits in mind, however they are defined and implemented. The key point is that any Consumer Consent should be simple and easy to understand for the consumer and the service provider. The reasons why and the benefits/value should be clearly articulated and not buried in an onerous terms and conditions check box as some other (non-energy) digital services are presented.

In simple terms if the consumer can significantly benefit from the change, this can be demonstrated, and the result is easily visible then some consumers will engage. The risk however is that an onerous and opaquebu process with no demonstrable benefit will remain unused and utilised by consumers. Further work is required around this consumer adoption point.

We are in broad agreement with the high priority use cases identified by Ofgem although would encourage further work to establish the benefits and value that can be unlocked. What is important is the 'blending’ of benefits from these use cases for consumers to materially increase consumer value in a simple and consolidated way.

Simplicity is key here to encourage consumers to participate in the new services and innovations that will be enabled. We should also consider how the unlocking of Consumer Consent can be utilised across adjacent markets to provide further opportunity for consumers to unlock further value.

We agree that a new Consumer Consent solution would enable the improvements to the energy system described in the four use cases as well as other potential uses cases to be identified.

**A principles-based approach to consumer data**

Gemserv agrees with Ofgem’s method and scoring used to define the three options presented in the call for input.

Our preference is for Option 1 and the provision of a single technical dashboard to manage the Consumer Consent process supported by a ‘light touch’ Option 2 set of principles. This should be mandated and enabled by Ofgem and adopted by the market and its actors.

We do not believe that a voluntary code would provide the necessary level of assurance and controls. Instead, we would be supportive of a mandated Code which includes provisions for its enforcement under Option 3.

We have provided some further thoughts on Option 1 in the table below:

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| --- | --- |
| Pros | Cons |
| 1. A solution enabled by Ofgem increases the likelihood that a solution will be designed and developed in a timely fashion | 1. **Public sector-led data programmes are prone to ongoing delays** – Although more complex, the comparative experience of the Pensions Dashboards Programme, has been of multiple delays (with deadlines moved from 2019 to 2023, and again now to 2026). |
| 1. A single dashboard solution reduces potential friction of different competing industry solutions – Competing industry solutions would encourage fragmentation and introduce unnecessary friction for consumers (e.g. holding back interoperability and introducing compatibility issues). | 1. **A regulator-driven solution is likely to be more costly** – whilst value for money will be important for Ofgem, the likelihood is that a publicly funded solution will cost more.   This is especially important since it isn’t clear who will ultimately pay for the solution. In Open Banking, costs were contentious since the initial costs fell on retail banks as part of their regulatory remedy. |
| 1. A single approach also encourages wider industry interoperability – Focusing industry attention on a mandated solution would drive industry to adopt common standards and requirements. | 1. **The risk that Ofgem adopts a minimum-capability approach** – Ofgem will need to balance resourcing and industry pressures, as well as changing sectoral priorities. Doing so could mean less focus on a solution that delivers broad consumer empowerment and is focused on delivering meaningful consumer use cases. |
| 1. This approach encourages an industry-wide, technology driven response – There are clear benefits in mandating technological adoption within the industry.   For instance, a non-technical response could miss out on common efficiencies, accuracy and data transparency for consumers. | 1. **A single solution will struggle to cater for differing user requirements and needs** – Any solution is likely to meet a broad spectrum of different consumer needs.   Pursing a single solution might encourage Ofgem to focus on industry needs, rather than different consumer/user needs and situations. |
| 1. The focus on a simple solution increases the likelihood it can be achieved – Ofgem’s option would provide a simple list of consents and the ability to opt-in or out.   Similarly, a focus on simple and narrow functionality means Ofgem’s option is inherently more achievable. | 1. **A single, regulator mandated solution might struggle to gain consumer trust –** Consumers are broadly sensitive about data sharing and the relative incentives of parties involved.   A solution put forward by Ofgem might benefit from trust in the regulator but may struggle to show it is aligned with consumer interests. |
| 1. Ofgem’s solution is not just limited to listing existing consents – In contrast to the Pensions Dashboards Programme, the functionality for consumers to opt-in or opt-out, e.g. switch consents on or off, is valuable. It offers consumers more value as it provides them the opportunity to take actions which are in their interest. | 1. **Limited regulator incentives to innovate** – post-delivery, it is likely that Ofgem will quickly move to a BAU model. In such circumstances it could be difficult to encourage further innovation and potentially even to maintain the solution effectively.   The problem of digital legacy and obsolescence could grow. |
|  | 1. **A single solution centralises data risks –** Mandating a single solution containing the data consents of all GB energy users poses a scale, security and resilience risk.   A more decentralised, potentially through enabled through multi-solution approach (e.g. enabling more than one solution) would mitigate those risks. |

**Further considerations:**

There are also broader questions that should be considered as Ofgem further iterates its policy:

* Reflecting other legal bases for data processing:

Ofgem’s approach borrows from the Energy Digitalisation Taskforce’s focus on consumer consent to empower consumers, improve consumer trust in data-sharing services and improve access to data.

However, there are other legal bases for data sharing that aren’t consumer consent (e.g. in pursuit of public functions, to secure the vital interests of the data subject, etc). Excluding these from the solution may simplify the requirements but could leave consumers with only a slightly less complicated data sharing environment to navigate.

Ofgem should explore the utility of expanding the scope of the solution to other legal bases. It should consider achieving a scalable solution that could bring data sharing under other legal bases under one consumer-facing tool.

* Reauthorisation of consents:

Should consumers have to periodically reconsent to show they actively want to share their data? Ofgem’s call for inputs doesn’t address the question of whether consents should have to be reauthorised periodically. Whilst the dashboard option provides a single platform for consumers to toggle their consents, there is no guarantee that users will use the dashboard to regularly check their consents.

Open Banking has notably had to strike a balance between the perceived consumer protection inherent in users having to reauthorise data sharing every 90 days, and the unnecessary friction inadvertently encouraged use drop off.

* Does consumer consent provide enough contextualising information?

Whilst viable ways at managing consumer consent are clearly needed, there are many energy use cases where access to consumer data and usage data still requires access to ‘business information’ that contextualises that data. The usual example is price comparison where tariff data is as important as usage data.

Enabling consumer empowerment is not just about enabling access and control of personal data, it needs to include sufficient contextualising data to enable consumer to meaningfully achieve better outcomes. Ofgem’s call for inputs does not seem to address this information.

**Conclusion**

In principle, Gemserv sees huge potential for both the market and consumers of the adoption of the proposed Option 1 and a technical solution around Consumer Consent. It should be simple and well-designed from a user perspective and the benefits should be identified and outlined in simple terms for the consumer to encourage adoption.

This should be enabled by Ofgem, adopted industry wide and supported by a ‘light touch’ Option 2 set of guiding principles. We do not believe that a voluntary code would provide the necessary level of assurance and controls. Instead, we would be supportive of a mandated Code which includes provisions for its enforcement under Option 3.

We would welcome the opportunity to actively support efforts to develop the proposals further and are happy to expand further on any points made and fully support the continued development of the proposal ahead of the planned consultation.

Yours sincerely

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