

Date: 31st August 2011

Colin Sausman
Partner, Smarter Markets
Ofgem
9 Millbank
London
SW1P 3GE

Dear Colin,

Commercial Interoperability: proposals in respect of managing domestic customer switching where meter with advanced functionality are installed

I am writing in response to the consultation on the proposed licence amendments. I would firstly like to say that in many respects it seems to me that the tone of this consultation indicates a welcome shift towards supporting more innovative suppliers and a move away from a rather negative attempt to prevent technological development. Hitherto there has been little recognition that customers may make informed choices about their supply of energy, based on a variety of factors including price, brand values and other services – whether or not they are supported by some metering or other technology. Furthermore, the roll-out of smart meters will NOT be the end of technological development, although it will be an important enabling development, further progress will happen and that may well result in different service offerings from suppliers. Interoperability issues will not go away, but informed customer choice and normal commercial pressures will resolve the vast majority of them, without recourse to regulatory steps.

However, the support for innovation and choice seems to run out of steam by question 11. We consider any licence condition that would impose significant burdens on Utilita as a consequence of the actions of another supplier, quite apart from being completely at odds with current practice and the principals of contract law, would fundamentally undermine our business model. The proposal to make an old supplier liable for the cost of a meter exchange would be detrimental to consumers' interests because it will stifle innovation and delay the delivery of the cost savings that would otherwise have been available to a large number of low income households (many of whom will be in Fuel Poverty). We would fight any such amendment to our licence with every option that is available to us.

Question 1: Do you agree that suppliers should be required to inform the customer of any potential loss of services before a switch takes place?

We completely agree that an incoming supplier should fully explain the extent of the service that they are offering thereby enabling the customer to make an informed decision about whether or not to switch. We believe this should be normal practice and that the eradication of miss-selling generally is something the industry needs to get to grips with now.

Question 2: Do you agree that the old supplier should be required to disable any misleading information prior to the switch taking place?

It is difficult to place obligations on the old supplier since their role is essentially passive in the change. Whilst they could inform the customer that certain devices may not work correctly, or that smart phone apps or other web services may display inaccurate information, it will be for the customer to stop using them or remove the app or web address from their device rather than requiring the old supplier to do so in an intrusive manner. If the sales process of the incoming supplier has been correctly carried out it should be clear to the customer what services will no longer work or will be replaced by a new service.

Question 3: Do you agree that the old supplier should be prohibited from removing historic consumption data from the meter?

ADMs are unlikely to hold the same level of historic data as required for the compliant meters. Typically only 30 days data will be on the meter at any time. It is also likely that the functionality to remove data is not available – typically it would simply be overwritten by the meter. More data will be stored on the suppliers systems or in third party web services. The Data Protection Act requirements should control the old supplier's management of this data.

Question 4: Do you agree that suppliers should not be allowed to charge customers for the replacement of a prepayment ADM in these circumstances?

We agree that suppliers should not charge customers for meter installations unless this is clearly communicated to customer and forms part of their switching decision. Not charging is consistent with the proposals for the roll-out of smart meters, and it would seem odd that a retro step in metering technology should be chargeable when the installation of a smart meter is not. Equally there should be no requirement on the old supplier to pay for a meter removal – this would be against all normal practice regarding the provision of meters. Clearly there is a requirement for Ofgem to police the sale of energy services to ensure that customers receive the benefits they were sold, in particular price. It would clearly be quite perverse if customers are switched to more expensive pre-payment services with lower service standards, away from ADM based pre-payment services with lower prices. Clearly customers may make such decisions based on brand values or other inducements.

Question 5: Do you agree that the old supplier should make available to the new supplier all the information they would need to help maintain the provision of services based on ADM functionality?

The new supplier should establish its capability to support the customer's requirements during the sales process. Information on the functionality of ADMs is public domain information and most meter manufacturers will be more than willing to provide suppliers with documentation on the features of their meters. Standard industry processes require suppliers to exchange information on the make and model of the meter installed at a customer's premises during the change of supplier process. It is very difficult for the old supplier to anticipate the needs of a new supplier. To be consistent with question 1 any obligation should be on the new supplier to be clear to the customer about its offering and the extent to which it can support the functionality of the ADM. If they cannot support it, this would quite rightly form part of the customer's decision on switching.

Question 6: What kind of information would the new supplier need access to in order to ascertain whether they can maintain advanced services?

The difficulty with this proposition is over timing. It is highly unlikely that a new supplier would want to alert the old supplier to a potential loss of customer by making a specific request ahead of registration, and after the registration is commenced it would be too late. The new supplier is more likely to want to rely on publicly available information or information direct from the manufacturer. Ultimately the only way in which the new supplier will be able to establish its ability to meet the customer's requirements is to validate them at the point of sale including verification of the make and model of the meter being used.

Question 7: Do you agree that a large supplier should make available on request all services that a new supplier would reasonably require to maintain some or all of the services relating to ADM functionality?

In general we agree that it is beneficial for consumers that small suppliers are not required to carry an unnecessary large burden of regulatory controls. Customer choice, innovation and competition all benefit from the diversity that new entrants bring. Equally it is important that larger more dominant incumbent suppliers are not allowed to prevent competition or stifle innovation. Regulations requiring them to make services available to other suppliers may well be necessary.

Question 8: Do you agree that the proposed volume thresholds are appropriate? If not, please suggest what would be more appropriate thresholds?

The 250,000 customer limit is consistent with other regulatory measures, but we would argue that these are all too low and that 500,000 or 1,000,000 customers would be a more appropriate level. We would also welcome greater clarity on exactly what is meant by 250,000, is it meter points or premises?

Question 9: What costs do you consider suppliers will need to incur to ensure compliance with the proposed licence conditions?

I would not expect suppliers to be able to separately identify the costs associated with meeting the proposed amendments. In any event suppliers should carry the cost of their sales process and be liable for the quality of that process.

Question 10: Do you consider that additional incentives are necessary for suppliers to avoid ADM meter exchanges on a change of supplier where possible?

In principle it seems wrong that any change of meter installation should be retrograde. Once an ADM has been installed it should not be removed, indeed given the national resource level required for the roll-out of smart meters it is unlikely that there will be enough installers to replace the 25 million households with dumb meters. ADMs should remain in situ until the end of the roll-out phase

Question 11: Do you consider that the measure outlined here places appropriate incentives on the installing supplier in respect of the costs of a meter exchange?

We completely reject any suggestion that a supplier installing an ADM should be liable for the cost of its removal by a new supplier. This is contrary to all current practice with regards to meter operations, and indeed contract law in so much as an agreement between two parties places an obligation on a third party. It will also have the effect of stifling innovation and resulting in a substantial number of consumers not being able to realise the benefits that the ADM installation would have brought.

To be consistent with the rest of these proposals it should be for the new supplier to establish whether or not they can support the ADM, or inform the customer that a chargeable meter exchange is going to be necessary. The customer can then make an informed decision as to whether or not they wish to proceed.

This seems completely at odds with the rest of these proposals. Suppliers bringing innovation and reducing customer's energy costs through lower prices should NOT be held responsible for any miss-selling or failure of another supplier to offer a similar level of service.

Ofgem can quite separately determine whether a supplier is achieving super profits by exploiting a barrier to competition, and make judgements based on individual cases in the event that this situation arises.

If such a measure were to be imposed on us we would fight it with every mechanism available to us, including a judicial review.

Question 12: Do you consider that £60 represents an appropriate proxy for the cost of a meter replacement in these circumstances? If not, what would you consider to be a more appropriate amount?

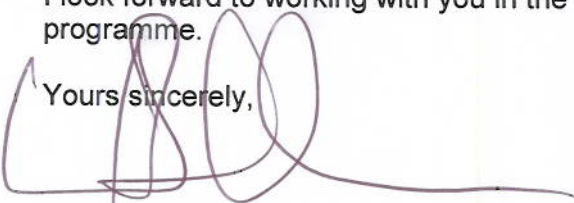
The quoted figure is low for a dual fuel installation and would not include the cost of the "new" meter. However, as previously noted, we would not accept any liability to pay another supplier's meter installation cost.

Question 13: How long a lead time do you consider is appropriate for enabling suppliers to be compliant with the proposed licence conditions?

The lead time would need to be necessarily very short otherwise there would be no impact before roll-out. Suppliers should be adapting their businesses to deal with additional functionality from smart meters anyway.

I look forward to working with you in the future development of the smart meter programme.

Yours sincerely,



William Bullen
Managing Director, Utilita Energy Limited