



Data Transfer Service (DTS)
Users and other interested
parties

*Promoting choice and value for
all gas and electricity customers*

Direct Dial: 020 7901 7159
Email: andy.burgess@ofgem.gov.uk

Date: 30th May 2013

Dear interested parties,

Decision on ElectraLink's proposed expansion of its electricity-related activities

This letter sets out our decision, following consultation on 3 December 2012, to provide the consent requested by DNOs which will allow ElectraLink to explore and perform data, market and infrastructure support services for businesses in the electricity industry.

This consent is outlined in Appendix 1 and amends a consent previously provided in 2004 (a track changed version can be found in Appendix 2).

Background

ElectraLink is a company wholly owned by the electricity Distribution Network Operators (DNOs). The company was originally set up by DNOs to comply with their obligation under their electricity distribution licences (the Licence) to provide, or procure the provision of a data transfer service (DTS).¹ The DTS allows participants in the energy sector to share data safely and efficiently.

The Licence includes a restriction on DNOs owning companies which carry out business falling outside of certain activities permitted by the Licence without the Authority's prior consent.² As a company fully owned by DNOs, ElectraLink's activities were therefore originally limited to those permitted by the DNOs' licences. This changed in 2004, when we granted consent to DNOs under their licences, the effect of which was to allow ElectraLink to undertake data transfer services and market infrastructure services for businesses in the gas and water industries.³

Last year, we received a letter on behalf of the 14 licensed electricity DNOs in Great Britain, asking us to enable ElectraLink to explore opportunities beyond those set out in the Licence and currently provided for by our 2004 consent. These additional electricity-related activities include commercial opportunities linked to the implementation of smart meters and the analysis of DTS data.

We examined this request in light of the need to ensure that customers of the regulated data transfer services continue to benefit from the quality of service currently received and are adequately protected. We also wish to ensure that the regime remains suitable if regulated activities cease to be the primary focus of ElectraLink.

¹ DNOs' obligations regarding data transfer services are captured in Standard Licence Conditions 35 and 37 of the electricity distribution licence.

² Electricity Distribution Standard Licence Condition 29 paragraph 2.

³ <http://epr.ofgem.gov.uk/Pages/EPRInformation.aspx?doc=http%3a%2f%2fepr.ofgem.gov.uk%2fEPRFiles%2fElectricity+North+West+Limited+-+Consent+Under+Standard+Licence+Condition+43+-+04-02-2004.pdf>

We have previously established four criteria,⁴ which in our view are appropriate for assessing the safeguards in place when a company seeks to undertake both regulated and commercial activities. As applied to ElectraLink, these are –

1. DTS Users should benefit from any diversification;
2. The new arrangements should not place disproportionate risk on DTS Users;
3. Standards of service under the Data Transfer Service Agreement (DTSA) should be maintained; and
4. ElectraLink’s role as DTS provider should not give it any undue competitive advantage in a contestable activity.

We asked ElectraLink to set out its views on whether and how ElectraLink meets these criteria and answer several other additional questions.

Consultation

Based on ElectraLink’s comments on how it would continue to meet the four criteria, and its responses to our questions, we were minded to conclude that our four criteria would be met and that enabling ElectraLink to explore these additional commercial opportunities could benefit DTS Users by helping to foster a more commercial and innovative environment. We also considered that DTS Users would be adequately protected if we alter the existing consent to enable ElectraLink to explore data, market and infrastructure support services for businesses in the electricity industry.

We invited views on altering the consent to enable ElectraLink to explore electricity-related commercial opportunities, including whether there were any risks to DTS Users that we had not identified and whether any additional measures were required to protect customers. We also sought views on our provisional assessment that enabling ElectraLink to explore electricity-related commercial opportunities was in line with the four assessment criteria. We specifically welcomed responses from DTS Users themselves.

ElectraLink’s response to our additional questions, and its views on how it would meet the four criteria, were published alongside our consultation.⁵

Responses

We received 12 responses to our consultation from a range of industry participants, including DTS Users.

Of the 12 responses to our consultation, six (including five DNOs) fully supported enabling ElectraLink to explore and undertake data, market and infrastructure support services for businesses in the electricity industry. These respondents considered that our four criteria had been satisfied and that ElectraLink’s ability to provide additional commercial services, on a “user pays” basis, would benefit existing industry participants. They did not consider that any additional risks would be created, or that additional measures would be required to protect customers.

Three suppliers responded to our consultation. All three parties are DTS Users. The suppliers generally supported enabling ElectraLink to explore additional commercial services. However, they welcomed a review of existing DTSA governance arrangements.

The remaining three respondents generally agreed that enabling ElectraLink to explore new electricity-related commercial services might offer potential benefits. However, they were concerned that ElectraLink could use its unique position as DTS provider to gain an undue

⁴<http://www.ofgem.gov.uk/Licensing/IndCodes/Governance/Documents1/elexon%20expansion%20way%20forward%20letter%20300412.pdf>.

⁵ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=242&refer=Licensing/Work>.

competitive advantage, thus limiting the benefits of effective competition for industry participants.

These respondents also considered that ElectraLink's access to DTS data might give it an undue competitive advantage and suggested that any DTS data that ElectraLink seeks to exploit for commercial purposes should be made available to other potential service providers.

These respondents questioned how ElectraLink would share costs and profits between its regulated and commercial activities. They also wanted more clarity on how governance arrangements for DTSA and commercial activities would interact and how necessary data security and confidentiality obligations would be observed and maintained.

One of these respondents suggested that additional measures might be needed to protect the interests of existing DTS Users. For example, permission from DTS Users to use data items for commercial opportunities and an audit to ensure DTS Users do not pay for commercial costs.

Decision

After reviewing the evidence put forward by ElectraLink and after considering the responses to our consultation against the background of our statutory and wider duties, we consider that providing consent under the Licence to allow ElectraLink to explore and undertake data, market and infrastructure support services for businesses in the electricity industry is beneficial. We consider this to be in line with our four criteria as explained below. We therefore consider it appropriate to alter the consent and enable ElectraLink to explore these opportunities.

We consider that allowing ElectraLink to explore additional data, market and infrastructure support services for businesses in the electricity industry, will potentially benefit both DTS Users and other industry parties. For example DTS Users could benefit by helping to foster a more commercial and innovative environment. This view is reinforced by the general support of DTS Users for ElectraLink offering these services.

We consider that DTS Users are adequately protected by the existing arrangements. We do not consider that enabling ElectraLink to explore commercial electricity services places significant additional risk on DTS Users. We consider that ElectraLink has appropriate accounting policies to ensure the correct apportionment of costs (including shared costs). The DTS charging principles (Schedule 8 of the DTSA) provide guidance about what can be charged to DTS Users. DTS Users will therefore not be charged as part of their DTS charges, for any new commercial activities (including any potential bids for new commercial activities).

DTS Users also have accountancy safeguards to promote transparency and resolve any disputes to the satisfaction of DTS Users. For example, the DTS User Group has oversight of the DTS budget, the DTSA allows for DTS Users to request an audit of DTS charges, and DTS Users are able to refer DTS charging disputes to us for determination.⁶ To further ensure that no costs associated with ElectraLink's commercial activities will be passed onto other customers, we consider that ElectraLink should account for commercial and regulated activities separately.⁷

We do not consider that amending the consent so that ElectraLink is no longer prevented from exploring data, market and infrastructure support services for businesses in the electricity industry, would give ElectraLink an undue competitive advantage. This is

⁶ In accordance with the provisions set out in Section 8 of the Data Transfer Service Agreement (DTSA).

⁷ We expect ElectraLink to continue to adhere to good governance of its own accord; however, we would consider providing specific conditions in the consent should there be evidence that ElectraLink's accounting practices should be improved.

because, the DTS charging principles seek to ensure that DTS charges are cost reflective and we consider that there are protections in place to ensure that there is no cross-subsidy of costs from regulated activities, as outlined above.

In exploring potential electricity-related commercial opportunities, ElectraLink will need to satisfy itself that it is complying with all relevant law, including competition law⁸ and data protection legislation. Nothing in this decision or consent should be interpreted as absolving ElectraLink or the DNOs from all relevant law, including competition law and other legal obligations. Our consent also notes that DNOs and ElectraLink must continue to meet their other licence obligations. The consent allows us to monitor ElectraLinks' ongoing commercial electricity-activities. We maintain the ability to revoke our amended consent, or to impose further conditions, if we deem this to be necessary in future (eg if we consider that ElectraLink no longer satisfies the four diversification criteria set out above).

We also do not consider that ElectraLink's permission to access and use DTS data, subject to certain conditions, gives it an undue competitive advantage. The data transferred across the Data Transfer Network (DTN) belong to the DTS Users, not ElectraLink. In February 2012, the DTS Users granted permission for ElectraLink to access these data for certain data analysis services. This access and the associated limitations and obligations on ElectraLink are defined in Schedule 9 of the DTSA.

We note that, as owners of the DTS data, DTS Users are able to grant permission to alternative service providers. As prospective users of data analysis services DTS Users are likely to gain from increased competition for data analysis services. We consider that if specific concerns are raised about third party access to DTS Users' data then we could review our consent and consider changes.

Our amended consent includes revised limitations on the activities that ElectraLink is able to undertake. We expect ElectraLink or the DNOs to actively engage with us if ElectraLink wishes to explore opportunities that may fall outside of the scope of the DNOs' amended consent. If ElectraLink's regulated activities cease to be its primary function, we may review whether it is still appropriate for the DNOs to maintain ownership of ElectraLink.

Consent

To implement this decision we attach our amended Consent (Appendix 1). The consent will come into effect on 30 May 2013.

Please contact James Veaney at james.veaney@ofgem.gov.uk or 0207 901 1861 if you have any queries in relation to this decision.

Yours sincerely



Andy Burgess
Associate Partner, Transmission and Distribution Policy

⁸ For example the Competition Act 1998 and the Enterprise Act 2002

Appendix 1 – Consent under Standard Licence Condition 29.2 of the Electricity Distribution Licence

1. The Authority hereby consents to the Licensee holding shares in ElectraLink notwithstanding the fact that ElectraLink's activities will not solely be to carry on business and provide services pursuant to Standard Condition 37, including the operation of the Data Transfer Service.

2. This consent has effect from 30 May 2013 and shall remain in force for as long as ElectraLink's business activities are confined to:

2.1 The provision of services pursuant to Standard Condition 37; and

2.2 The provision of data services and market operation and support services to businesses in the electricity, gas and water industries in the UK and elsewhere;

unless revoked or amended in writing by the Authority by the provision of reasonable notice to the Licensee.

3. This consent is issued pursuant to Standard Licence Condition 29.2 only and, as such, its effect is restricted to this condition unless otherwise stated, and for the avoidance of doubt:

(a) nothing in this consent shall fetter the Authority's discretion in relation to the interpretation or enforcement of any other provision of the licence, including, without limitation, any other paragraph of Standard Licence Condition 29, even if such interpretation or enforcement relates to the activities covered by this consent;

(b) any reference in this consent to compliance with any specific provision of the licence or the absence of such references in this consent or any other consent, acceptance, approval, direction, indication, agreement or other similar licence related instrument issued by the Authority, shall in no way be construed as meaning that the Licensee is not required to comply with any condition which is not specifically referenced and no adverse inference shall be drawn by any inconsistencies in approach; and

(c) notwithstanding paragraph 2, in the event that the Authority determines that the Licensee has breached this consent, this consent shall be revocable immediately without notice at the sole discretion of the Authority.

4. The Licensee must provide information in relation to any activity covered by this consent in accordance with a request from the Authority.

Appendix 2 – Consent under Standard Licence Condition 29.2 of the Electricity Distribution Licence (track changed version)

1. The Authority hereby consents to the Licensee holding shares in ElectraLink notwithstanding the fact that ElectraLink's activities will not solely be to carry on business for a permitted purpose and provide services pursuant to Standard Condition 37, including the operation of the Data Transfer Service.

2. This consent has effect from ~~4th February 2004~~ 30 May 2013 and shall remain in force for as long as ElectraLink's business activities are confined to:

2.1 The provision of services pursuant to Standard Condition 37 ~~Activities which fall within the definition of a "permitted purpose" under standard condition 32 of the Licence; and~~

2.2 The provision of data ~~transfer~~ services and market operation and support infrastructure services to businesses in the electricity, gas and water industries in the UK and elsewhere;

unless revoked or amended in writing by the Authority by the provision of reasonable notice to the Licensee.

3.1 This consent is issued pursuant to Standard Licence Condition 29.2 only and, as such, its effect is restricted to this condition unless otherwise stated and for the avoidance of doubt:

(a) nothing in this consent shall fetter the Authority's discretion in relation to the interpretation or enforcement of any other provision of the licence, including, without limitation, any other paragraph of Standard Licence Condition 29, even if such interpretation or enforcement relates to the activities covered by this consent;

(b) any reference in this consent to compliance with any specific provision of the licence or the absence of such references in this consent or any other consent, acceptance, approval, direction, indication, agreement or other similar licence related instrument issued by the Authority, shall in no way be construed as meaning that the Licensee is not required to comply with any condition which is not specifically referenced and no adverse inference shall be drawn by any inconsistencies in approach; and

(c) notwithstanding paragraph 2, in the event that the Authority determines that the Licensee has breached this consent, this consent shall be revocable immediately without notice at the sole discretion of the Authority.

4. The Licensee must provide information in relation to any activity covered by this consent in accordance with a request from the Authority.