

SUMMARY POLICY PAPER – FOR EDAG INFORMATION

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Summary

1. Irrespective of which reform package is chosen, the Switching Programme will prompt substantive changes to the governance framework, incorporating both licences and industry codes. As the Target Operating Model (TOM) proposed that the DCC would be responsible for the procurement of the Centralised Registration Service (CRS)¹, it was logical to assume that the governance of the CRS would sit within the Smart Energy Code (SEC) alongside existing DCC services. This could also provide opportunity to rationalise some of the associated governance which sits in other industry codes which unlike the SEC are not dual fuel.
2. However, given the level of uncertainty as to the exact scope of the CRS and the consequential impacts on other aspects of the switching and wider retail arrangements, the Regulatory Design Team (RDT) was tasked with capturing existing and future business and regulatory requirements and carry out an assessment of the most appropriate governance framework for them. Whilst the SEC therefore remained an option, the RDT was encouraged to fully explore alternatives, including minimal change to the existing codes. Developments in other areas such as the implementation of the CMA remedies have also fed into this thinking and challenged previous assumptions.
3. RDT Product 3 (annexed to this document) sets out the high level assessment the group made of each of the governance framework options. Each of the three leading options involved the development of a Retail Energy Code (REC), either to be complementary to the SEC and governing only those switching arrangements that would be out-of-scope of the CRS, or to capture both the CRS and wider switching arrangements. We therefore propose to continue the work of the RDT on the basis that it is likely a new REC will form part of the regulatory and governance framework.

¹ The CRS includes the Central Switching Service (CSS) and Market Intelligence Service (MIS). The term CRS is preferred within the Procurement Framework as it is a more generic term to cover a range of procurement activity within the Programme. Note that DCC may also be required to procure other services, for example a Systems Integrator.

4. The benefit of adopting this working assumption now is that it would allow the work of the RDT to proceed while key decisions on the system solution and associated reform package remain outstanding. The ability to draft from a blank page will allow for the appointment of dedicated legal resource to produce the licence and code drafting, rather than rely upon fragmented and potentially conflicting modification procedures. We consider that this will both de-risk and expedite this area of the programme. We also consider that the development of a REC could facilitate any of the reform packages, but would not preclude a different governance model being chosen at a later date if appropriate. For instance, revised drafting of the switching arrangements could be adapted to form a discrete schedule of an existing code rather than of itself form a new REC.

Summary of key points from stakeholders

5. Given the potential deviation from the TOM, we shared the RDT output on product 3 with the Programme Board ahead of it being discussed more widely with the Regulatory Design User Group (RDUG). The Board supported the rationale behind the RDT recommendation and considered it to be consistent with the wider work being undertaken on licensing and code governance.
6. At its meeting of 17 Oct 2016, the RDUG accepted Product 3 as being complete and was generally supportive of the RDT recommendation. The group also supported our proposed way forward, though some members noted their expectation that the final decision on the chosen governance model would be subject to formal consultation. However, it was agreed that the forthcoming request for information (RFI) may not be the suitable vehicle this given its emphasis on cost-benefit analysis, which was felt unlikely to be a determining factor in deciding between governance models. Members also expressed a wish to be fully engaged with the development of the new governance arrangements. It was expected that this would involve more regular updates than have been necessary to date, albeit these may take the form of emails and requests for comment on written output, rather than face to face users group meetings.

Next steps

7. The original intention of the RDT was for its output to feed into and be consulted upon as part of the RFI as part of design baseline 1 (DB1). However, as the governance framework will be dictated in large part by the chosen solution architecture and operational requirements rather than discrete cost consideration, we do not intend to consult on governance options within the RFI. Instead, we will set out within the RFI a short commentary of progress to date and the way forward, with a final decision to be consulted upon and taken later in 2017 once the choice of solution architecture is known.
8. The RDT will continue to develop business rules stemming from the work of the Business Process Design Team. These will in turn form instructions for the legal drafting.

9. We intend to procure dedicated legal resource through the Ofgem procurement framework, with the RDT forming part of the assessment panel for tenders. We hope that the RDT members will be able to maintain their support into 2017/18, with the group continuing to act in an advisory capacity to the appointed lawyer(s), and as quality control for their output.
10. The procurement of this dedicated legal resource is contingent upon the agreement of industry parties to fund this work. Given that suppliers will be the main industry beneficiaries of the revised arrangements, we have written to the MRA and SPAA executive committees asking for their assistance in facilitating this.
11. We anticipate that the first tranche of drafting may be available autumn 2017 and potentially set out obligations pertaining to the transitional period of the programme. However, it is likely that drafting will be an iterative process and open to refinement through to the build and test phase.
12. Once the new drafting has been established, Ofgem may direct consequential modifications to the existing industry codes pursuant to its Significant Code Review powers. Depending upon the final scope of the REC, these modifications may remove redundant provisions and/or incorporate by reference those provided for elsewhere, having the effect of streamlining overall retail governance.

Questions for EDAG

- a) Do EDAG members agree with our proposal not to consult on governance options as part of the RFI, but to proceed on the basis of a REC and consult later in 2017?
- b) Do EDAG members have any concerns with the proposed approach for the development of license and code drafting?
- c) Are there any wider issues or concerns relating to the Regulatory work stream that need to be addressed prior to the RFI being published?