

Jacqui Russell
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Ofgem
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29 March 2021

Dear Jacqui,

**CALL FOR EVIDENCE: REVIEW OF THE REGULATORY ARRANGEMENTS FOR
THE DATA COMMUNICATIONS COMPANY**

Thank you for the opportunity to input to this review.

We very much welcome Ofgem's timely intervention as we look ahead to 2025 and the conclusion of the contracted term of the current DCC. Already more than seven years since the DCC contract was initially awarded, there is clearly much to think about: for example, it is doubtful anyone back then could have foreseen that transitional governance arrangements would still obtain today, even if only in part.

We would have similarly dismissed any notion that the *ex post* price control arrangements could survive the original rollout duty itself. These *ex post* arrangements, which were primarily introduced to guard against the uncertainties surrounding the scope of this new role, must surely have served their purpose by now. There clearly needs to be a rebalancing of rights and obligations such that the DCC, whoever that may be in the future, cannot simply spend money as it wishes without proper accountability. Only when *ex ante* arrangements are in place can there be comfort that this is the case

We note the matters to be considered in the first phase of your work and have provided our thoughts on these in Annex 1.

Should you wish further clarification of any of the points raised in this response, please do not hesitate to get in touch.

Yours sincerely,



Richard Sweet
Head of Regulatory Policy

**REVIEW OF THE REGULATORY ARRANGEMENTS FOR THE DATA
COMMUNICATIONS COMPANY - SCOTTISHPOWER SUBMISSION**

The future role of a DCC, its objectives and its authorised business post-2025

Over the past 12 to 18 months, the current DCC has been keen to explore, with stakeholders, the potential for broadening the DCC service offering. However, we understand the feedback from suppliers has very much been to get the mandatory business right first. Certainly, we have observed little evidence from the current service provision to suggest that a DCC will be able to both meet its core service obligations and offer value added services.

As an energy supplier, we would wish the current DCC to prioritise a stable and consistent service across the whole of the country, ie one that does not disadvantage consumers for reasons of geography. Whomsoever the DCC licence holder may be in the future, we would similarly expect them to ensure that the delivery of any value added service was also consistent across the whole of the country.

The extent to which DCC services are allowed to go beyond the energy sector

While there must be some room for commercial discretion, it is essential that the DCC licence holder is able to demonstrate that its business decisions will not place undue weight on its own commercial interests to the extent that such decisions might conflict with its mandatory duties.

Also, noting the potential for value added services to be requested by energy suppliers' competitors, we would suggest Ofgem ensures that the financing of any such agreements is kept entirely separate from the funding of the DCC's mandatory business.

What can be delivered via contracted service providers or by the DCC directly

Broadly, we would expect a contracted service provision model to yield the best value for money. However, our experience of the DCC's service providers has been mixed. Leaving aside the well-worn issues with Communication Service Provider (CSP) North Region, we do not believe the current Data Services Provider (DSP) arrangements have worked particularly well either and, while it remains to be seen whether the S1SP service works any better in a fully operational environment, we are sceptical.

Such issues notwithstanding, we accept that the current DCC had little influence over the contract awards in the case of the original service provision and, for that reason, may not be held entirely accountable for spiralling costs. We welcome Ofgem's intent to scrutinise the DCC's contract management as a core competency, and we would wish to see the results of that before turning away from a contracted service provision model. However, it is essential to good governance and proper accountability that any new DCC be allowed to award and manage its own contracts, and the performance clauses within them, appropriately.

The effectiveness of the current framework in delivering vfm - evidence sought for alternatives

We do not believe the current framework is at all effective in delivering value for money. It seems this is largely because the DCC is struggling to manage its service providers via the contracts it inherited at licence award. Moreover, as we understand it, the flow through of

liabilities from these contracts only indemnifies the DCC. This means the DCC service providers have no accountability to DCC Users, and that could expose DCC Users to irrecoverable losses. We would, therefore, wish to see any future DCC not only negotiate terms that provide value for money, but also allow for the extending of protections to service users.

The Government's continued direct involvement may also be unhelpful as it seems to encourage the DCC to make the sort of unrealistic plans that have led to delays in the past; delays that have hampered rollout of smart meters and driven up costs. Perhaps it is time to move away from transitional governance completely and for BEIS to fully cede control to Ofgem. Certainly, it is to be hoped that the Secretary of State does not elect to further extend his Section 88 powers beyond the current end date in 2023.

Another feature of the DCC's early governance to have outlived its usefulness is the *ex post* price control. The uncertainty surrounding the nature and scope of the DCC's service provision has abated, giving way to uncertainty among its customers as to the scale and affordability of its forward work plans. This is because the current DCC's development and delivery of change/additional scope still seems to be carried out with minimal DCC User involvement or approval.

While all this may be largely due to commercial constraints, the current DCC strategy for communicating business cases simply has not worked. We very much doubt that any DCC User will be clear about the current DCC's planned programme of work, or at whose request it is being carried out. However, it will undoubtedly cost the DCC Users, and energy suppliers in particular, millions of pounds in funding. Such an approach is no longer tenable. It is clear that a new methodology is needed for the future, one that involves the DCC's customers far more directly than at present.

While the current DCC has created forums and stakeholder engagement sessions, these have had limited success and the feedback of late is that these are no longer proving effective. DCC Users must have unobscured visibility of planned future developments and projected costs, and these projections must be subject to *ex ante* consultation and assessment.

Any monopoly business should expect to be subject to tight control and oversight, but we do not get the impression that the current DCC recognises this. A future DCC should be given clear markers on its customer's expectations: what these customers should get visibility of and how they might influence decisions over infrastructural change to allow them to maximise efficiency and demonstrate cost control.

The key aspects of DCC's business that will be crucial to our own activities over the timeframe to 2040

Quite simply, it is the DCC's attention to its core business that is most important to our own activities. We must be able to rely on the DCC maintaining the link with our smart meter estate, such that we are properly able to service the smart tariffs that we expect our customers will grow over time to depend upon.

DCC's role in the transition to net-zero

While we believe that smart meters will play an important role, we fear the DCC's contribution may be hampered by its reliance on older technology. Certainly, we can expect the emergence of disruptors to challenge DCC hegemony over consumers' energy data. With cloud technologies offering near real time access to demand data, we can expect at least some of these service providers to leverage aspects of the smart metering

infrastructure (specifically, the Home Area Network) in their service offerings, which might include Demand Side Response.

DCC's compliance, cost control and incentive regimes

Again, we would stress the importance of moving the DCC to *ex ante* price control arrangements as soon as possible. In our view, the DCC will never be subject to effective cost control until all its costs are surfaced and properly scrutinised in advance. As it stands, we believe the DCC is able to rely on a natural reluctance to disallow costs that have already been incurred, even where the customer benefits are questionable.

Ofgem is clearly trying to hold the DCC to account: its recent the review of the Operational Performance Regime (OPR) is testament to that. We also recognise the rigour with which Ofgem has scrutinised the DCC's price control submissions. Nevertheless, our experience to date would suggest that the DCC has been rather successful in persuading Ofgem that contentious developments were necessary and, as a result, recovering their costs in the end.

Of course, these can often be relatively trifling; but this is because the real costs are from the DCC's service providers and, as we touched on above, there appears to be no industry or regulatory accountability for them.

ScottishPower
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