

Smart Data Review: Proposals

6 August 2019

Introduction

Energy UK is the trade association for the GB energy industry with a membership of over 100 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership covers over 90% of both UK power generation and the energy supply market for UK homes. We represent the diverse nature of the UK's energy industry – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

Our members turn renewable energy sources as well as nuclear, gas and coal into electricity for over 27 million homes and every business in Britain. Over 680,000 people in every corner of the country rely on the sector for their jobs, with many of our members providing long-term employment as well as quality apprenticeships and training for those starting their careers. The energy industry invests over £12.5bn annually, delivers around £84bn in economic activity through its supply chain and interaction with other sectors, and pays £6bn in tax to HMT.

This is a high-level industry response to the Department for Business, Energy & Industrial Strategy's consultation on proposals arising from its Smart Data Review. We would be happy to discuss any of the points made in further detail with BEIS or any other interested party if this is considered to be beneficial.

Executive Summary

Energy UK welcomes the Smart Data Review and supports many of the proposals put forward in this consultation. In particular, we are pleased to see BEIS take up a cross-sectoral approach to Smart Data initiatives, with a central Smart Data Function facilitating and coordinating action across various, different markets. These Smart Data Initiatives should be developed with the assumption of cross-sectoral interoperability from their foundations, and we would welcome clarity as to how this approach will align with the currently paused development of Midata in energy. Such a central body should also have responsibility and power to ensure there are consistent data rules across sectors, and that unnecessary barriers to cross-sectoral innovation are not able to be put in place by individual sectoral regulators.

Importantly, if progressed, this work should not prevent the direct regulation of TPIs, potentially by the sectoral regulators' powers being extended to cover the wider activities of TPIs in their respective markets, which are broader than just the Smart Data focus of the Smart Data Function. For example, in energy, there is the growing issue of TPIs acting as the main customer interaction in switches, but without the customer service of protection obligations (and associated costs) that are faced by suppliers in the licensing regime.

We welcome and support BEIS' consideration of bringing TPIs within the scope of Ofgem's (and Ofcom's) regulatory powers. However, BEIS current proposal would create a two-tier regulatory regime by stopping short at only introducing a general authorisation regime for TPIs in energy, in contrast to the licensing regime for suppliers. As energy is an essential service, it could be detrimental to customers (and distortive to competition) if they were afforded less robust or fewer protections if they chose to engage with a TPI for their energy needs.

If BEIS does proceed with expanding sectoral regulators' powers over TPIs, it should instead consider allowing Ofgem to expand the current regulatory framework by creating new licences for new activities, such as auto-switching, energy brokers and price comparison services, rather than the proposed general authorisation regime. This is an option put forward by the joint Ofgem/BEIS Future Retail Market Review. In the longer-term, as also highlighted in the Review, we believe that there should be a fundamental reform of the regulatory framework to implement activity-based licensing of all market participants.

Alternatively, BEIS may want to consider the benefits and costs of a wider cross-sectoral regulatory framework, where a single body sets the rules for all non-Smart Data activities and behaviours across all markets, noting the cross-sector nature of many TPIs. Sectoral regulators like Ofgem could then have concurrent powers to enforce those rules, as they do with competition law. No matter the approach ultimately taken by BEIS, it will be vital for regulation always be of TPIs directly, not via the companies that they work with, as this is the most proportionate approach.

Midata in Energy

Energy UK has particular experience in the development of Midata in energy, acting as chair of the Industry Delivery Group up until the project's pause in April to undertake a targeted review of the framework and developments process.¹ We remain supportive of the principles underpinning the Midata in energy project and its scope of encompassing all suppliers.

There will undoubtedly be impacts upon the future development of Midata in energy from the Smart Data Review, and vice versa. There are clear benefits for the development of Smart Data Initiatives to be developed from the start with a cross-sectoral focus, under the direction of a central Smart Data Function to ensure interoperability and consistency. Future-proofing Midata in such a manner would avoid the risk of having to redevelop systems at a later date, unnecessarily increasing costs to consumers. Questions are, therefore, raised about the continuation of the (currently paused) Midata project in isolation. Clarity from BEIS and Ofgem would be welcome as to how much alignment there is between the planned Smart Data Function and the continuation of Midata project in any form.

Energy UK and our members' experience in the development to date of Midata have informed many of the points within this response. However, there are a number of concerns that are not directly addressed by the consultation questions which we believe BEIS should give consideration.

First and foremost is that the eventual timelines for any Midata or Smart Data Initiative in energy must be based upon realistic goals. Suppliers must have sufficient time to design, build and implement systems in compliance with any new standards. The previous Midata project had intended to only allow a three-month period from statutory consultation to the requirements coming into force. BEIS should recognise that suppliers will likely not be able to start technical builds until any final standard is published, and it should not expect suppliers to invest in new systems prior to confirmation of the final design. BEIS should also be cognisant of the high level of system change that will already be required by suppliers, through various ongoing projects such as the Faster Switching Programme and Market-wide Half Hourly Settlement, on top of other continuing resource pressures such as the smart meter rollout and the default tariff cap.

The risk of a negative impact on the initial customer experience of a rushed Midata or similar initiative implementation needs to be taken into account and actively guarded against in any development. In addition, in order to ensure that Midata can be implemented in the most cost-effective way for consumers, we believe that it would be beneficial to review how suppliers' systems necessary for Midata might overlap with those required by concurrent developments, such as the Disengaged Customer Database or the faster switching programme. If relevant system overlaps are identified then it may be prudent to align the timelines and design specification where appropriate to maximise efficiencies, reduce duplication and limit associated unnecessary costs.

The development of any Smart Data Initiative in energy, or indeed in other sectors, would benefit from engagement with sector stakeholders to ensure that the resulting product is fit for purpose for consumers and delivered cost-effectively, taking into account current systems and capabilities. Throughout the Midata development to date Energy UK has raised concerns that the development of the standard was

¹ <https://www.ofgem.gov.uk/gas/retail-market/market-review-and-reform/midata-energy-project>

only being engaged with by those suppliers and other industry actors with the resources to meet the commitment necessary. Such restricted engagement could lead to difficulties with the standard, such as through unseen consequences of technical designs or policy decisions. It will, therefore, be important that the design process is as transparent and accessible as possible, with robust consultations exercises through the usual channels of industry engagement to maximise that engagement.

Enabling data driven innovation in consumer markets

5. What other roles might industry find it useful for Government to perform in addition to it acting as a facilitator for Smart Data?

We believe that Government could play a useful role in acting as a facilitator for Smart Data Initiatives across sectors, setting a clear direction and expectations. However, it should ensure that it maximises engagement with industry incumbents, regulators and other stakeholders to ensure that any changes made to internal or external systems, along with regulatory requirements, are made in a cost-effective manner which best aligns with other resource-intensive work programmes being undertaken.

It would be useful for Government to set out explicit aims of initiatives to guide their development. In doing so, it should recognise that a transitional approach may be most appropriate, in which a case is built for action to redress a specific detriment with the possibility to expand services and evolve along with markets. For example, Midata in energy was being developed with the specific goal of improving the tariff comparison process to increase switching and drive competition by allowing greater access and use of customers' data, with their consent. Such a phased approach should acknowledge that following an initial implementation, it could be expanded to address other opportunities if deemed the most appropriate action available, achieved in a cost-effective manner and built upon a robust evidence base.

Energy UK would welcome further explanation from BEIS as to its alignment with the DCMS National Data Strategy workstream, along with the joint Ofgem/BEIS Future Energy Retail Market Review which is examining the regulatory framework for a future energy market. We note that there are a number of workstreams across government departments and sector regulators which necessitate a collaborative approach to minimise duplication of work, or contradiction in outcomes to the detriment of consumers and competitive markets.

6. Do you agree that we should establish a cross-sector Smart Data Function with the proposed responsibilities set out above?

Energy UK believes that a single, central Smart Data Function would have benefits to the development and implementation of initiatives across sectors, and in particular in ensuring that commonality between the various initiatives are built-in to ensure compatibility and maximise the innovation possible. We agree with the proposed responsibilities set out in the paper, such as rules for consent, authenticating data exchanges and managing the accreditation of third-party intermediaries (TPIs).

However, the benefits that could be realised from the central Smart Data Function could be undermined if additional, contradictory or varying rules are able to be imposed by sectoral regulators. BEIS should consider the benefits of the central Smart Data Function being responsible for how data can be used across all sectors. This would remove the detriment and barriers resulting from inconsistent data regulations being applied across different sectors.

Importantly, if progressed, this work should not prevent the direct regulation of TPIs, potentially by the sectoral regulators' powers being extended to cover the wider activities of TPIs in their respective markets, which are broader than just the Smart Data focus of the Smart Data Function. For example, in energy, there is the growing issue of TPIs acting as the main customer interaction in switches, but without the customer service of protection obligations (and associated costs) that are faced by suppliers in the licensing regime.

Alternatively, BEIS may want to consider the benefits and costs of a wider cross-sectoral regulatory framework, where a single body sets the rules for all non-Smart Data activities and behaviours across all markets, noting the cross-sector nature of many TPIs. Sectoral regulators like Ofgem could then have concurrent powers to enforce those rules, as they do with competition law. No matter the approach

ultimately taken by BEIS, it will be vital for regulation always be of TPIs directly, not via the companies that they work with, as this is the most proportionate approach.

The prospect of a central Smart Data Function to drive Smart Data Initiatives across various sectors raises questions as to the continuation of the currently paused Midata in energy project. We would, therefore, urge BEIS to provide some clarity sooner rather than later as to how the Smart Data Function proposal links with the joint Ofgem/BEIS development of Midata in energy, and it will seek to ensure alignment between them.

7. What would be the best form for the Smart Data Function to take? Should it be, for example, a new body, part of an existing body or some other form?

Energy UK has no specific views as to the best form for the Smart Data Function to take. Ultimately, it will be dependent upon its final design and responsibilities. However, a single, central body with responsibility for rules on data use across all sectors would provide clear benefits to innovation through consistency and interoperability. To achieve this, BEIS could consider whether the Information Commission's Office (ICO) may be best placed to take this role, noting its current regulatory responsibilities in relation to personal information.

Most importantly, any body (new, existing or otherwise) should be committed to interaction and transparent consultation with all relevant market participants in its development of initiatives. In line with the proposed responsibilities, this could see the Smart Data Function limited to an oversight and facilitator role, rather than hands-on development of each specific initiative.

8. How can we ensure that the costs of Smart Data initiatives are shared fairly between the participating businesses?

In line with the Secretary of State's 'no free-riding principle',² Energy UK believes it is important for the users of the new initiatives (e.g. TPIs) should pay their fair share of implementation and ongoing costs. For example, this could be achieved with cost recovery via the accreditation application process and regime, and/or by a per transaction cost.

Whatever the funding model, it will be important to ensure that there is no duplication of costs, and that consumers are not paying twice for access to their data.

Using data and technology to help vulnerable consumers

9. What other actions could the Government or regulators take to support the use of data and innovative services to improve outcomes for vulnerable consumers?

Consideration should be given by Government and regulators about existing outcomes for vulnerable consumers across public and third sector organisations. For example, greater and more innovative use of data could help improve health and social care outcomes by sharing with NHS and Social Services.

As outlined in the independently-chaired *Commission for Customers in Vulnerable Circumstances'* recent report, there is also wider work that can be done by Government and between regulators to enable greater data-sharing to enhance the services and protections that such customers receive.³ Some work is already underway between the energy and water sectors to improve data-sharing, which aims to achieve easier customer identification and better tailored support.⁴

Other actions could be taken by Government, such as effective data-matching with Department for Work & Pensions data to ensure suppliers can best support those customers at risk of fuel poverty through schemes such as the Warm Home Discount (WHD) and the Energy Company Obligation (ECO).

² <https://www.gov.uk/government/speeches/after-the-trilemma-4-principles-for-the-power-sector>

³ <https://www.energy-uk.org.uk/publication.html?task=file.download&id=7140>

⁴ <https://www.ukrn.org.uk/wp-content/uploads/2018/11/UKRN-Making-better-use-of-data-to-identify-customers-in-vulnerable-situations-follow-up-report.pdf>

10. Should we strengthen the powers of sector regulators to enable them to use consumer data to improve their understanding of the challenges faced by vulnerable consumers and to intervene to improve outcomes?

Ofgem, the energy sector regulator, already has sufficient information gathering and market monitoring powers, along with the power to create new licence conditions. For example, it has already mandated the sharing of “priority service” information between suppliers and networks in line with existing data protection and privacy laws.

Energy UK has welcomed Ofgem’s constructive engagement with suppliers throughout its database development. However, we believe that BEIS should reflect on the challenges faced in the development of Ofgem’s disengaged customer database which, contrary to the statement in paragraph 48, has not been implemented nor has it been used to run switching trials.

On a number of occasions, Energy UK has raised some concerns with the intended operation of the database. In particular, suppliers have concerns regarding the legal justification and protections for the transfer of any data to third parties for as yet unspecified uses.

If BEIS is to pursue this policy option, it should ensure that sector regulators and, importantly, the Information Commissioner’s Office (ICO) work collaboratively and transparently, ensuring that they are aligned as to the lawfulness of the process. Any services to be offered from a database should be defined upfront as part of its development and supported by a robust evidence base.

11. How can we ensure that the Smart Data Function improves outcomes for vulnerable consumers? Do we need to consider any further actions?

Energy UK agrees that innovation from technological advancements and smarter data access and utilisation creates previously unknown potential to improve outcomes for customers in vulnerable circumstances, across energy and all markets.

A properly-resourced central Smart Data Function, as facilitator and coordinator, should ensure that separate initiatives are not contradictory, are pulling in the same direction, are cost-effective and that areas of commonality are appropriately accounted for in designs. It should also ensure that the sector-specific initiative developments take into account any nuances of each market, maximising the usefulness of each initiative to their market and consumers. If the ultimate goal is cross-sectoral data portability, then BEIS should consider how the Smart Data Function could best be implemented to facilitate this aim.

With the Midata in energy project, the initial focus has been on improving the tariff comparison process. However, we do recognise that the value of smart data in energy is not just aligned to the switching process and that there are as yet untapped opportunities to improve services for customers, particularly those in vulnerable circumstances. For example, suppliers or services could use smart data with customers’ consent to predict and observe customer behaviour to ensure that they are safe and well in terms of their energy use. As highlighted in response to Question 5, there is a useful role for the Smart Data Function to oversee and direct the gradual evolution of various sector initiatives to ensure that they remain aligned, deliverable and mutually beneficial to customers across sectors.

Protecting consumers and their data

12. Do you agree these protections for when TPPs use Smart Data are needed? Are there others we should consider?

Energy UK agrees with the fundamental need to ensure that robust protections are in place for the use and transfer of customer data, not least to provide reassurance to consumers to maximise the take up of new, data-driven services that could be offered.

We would urge BEIS to ensure that there are swift and robust consumer redress mechanisms in place across all initiatives. As a point of principle, it should be the party responsible for any data loss or misuse that is held to account, rather than any data holder that provides the data in good faith, and in line with the standards in place at the time.

13. How should our proposed approach to accreditation operate in practice if it is to effectively ensure that consumers' data are protected and minimise burdens for TPPs?

Energy UK agrees with the proposal for a cross-sector approach to accreditation, noting in particular the benefits for simplifying adherence and maximising the benefits that consumers could gain from cross-sector or multi-market offerings.

However, this accreditation regime should be solely focused on Smart Data issues and does not negate the need for direct regulation to cover the wider activities of TPIs. This could be achieved by extending sectoral regulator's powers over TPIs which, in conjunction with a central data-focused accreditation regime, would provide robust consumer protections, and give consumers the trust needed to take up and benefit from innovative services and offerings with confidence. Alternatively, BEIS may wish to consider the merits of a wider, cross-sectoral regulatory approach to TPIs, and whether this would better address the cross-sectoral nature of TPIs and services on offer for consumers now and in the future.

14. What are the advantages and risks of introducing a cross-sectoral general authorisation regime for TPPs?

Energy UK has long called for Ofgem to be given the powers to directly regulate TPIs in the energy market as we see an increasing risk for customer detriment with the growth in unregulated services. Just over half (54%) of those domestic customers who switched tariff or supplier in 2018 used a price comparison website, compared with 45% in 2017.⁵ We are also seeing a growing number of auto-switching sites entering the market, as well as non-traditional players providing switching services such as financial service providers.

In the non-domestic sector, it is not new for third parties to play a larger role in the switching and engagement behaviours of customers. In 2018, over two-thirds (67%) of small and microbusinesses used an energy broker to help choose their current energy plan.⁶ This evolution is creating opportunities for the industry to further increase customer engagement, particularly as programmes to improve the effectiveness of competition are implemented alongside the continued digitalisation of the energy system.

However, the regulatory regime has not kept pace with these changes there is a challenge to ensure that customer confidence is retained. Price comparison websites, auto-switching services, non-domestic energy brokers, and other third-party intermediaries (TPIs) are not currently regulated. This is just one aspect of the future energy market that we expect to be addressed as part of the BEIS and Ofgem joint Future Retail Market Design project, in line with recommendations from Energy UK's *Future of Energy* report,⁷ in order to ensure that customers remain protected and confident in that protection no matter how they seek to access their energy.

We welcome and support BEIS' consideration of bringing TPIs within the scope of Ofgem's (and Ofcom's) regulatory powers. However, BEIS would create a two-tier regulatory regime by stopping short at only introducing a general authorisation regime for TPIs in energy, in contrast to the licensing regime for suppliers. As energy is an essential service, it would be detrimental to customers (and distortive to competition) if they were afforded less robust or fewer protections if they chose to engage with a TPI for their energy needs.

We believe that it should give greater consideration to an activity-based licensing approach for all players in the market, as discussed in Energy UK's *Future of Energy* report and as is being considered in the Future Energy Retail Market Review.⁸ In the shorter term, as highlighted as an option in the Review consultation, it could be more prudent to support Ofgem in issuing new licences for new activities to ensure parity of costs and consumer protections no matter how a consumer may choose to engage

⁵ https://www.ofgem.gov.uk/system/files/docs/2018/10/consumer_engagement_survey_2018_report_0.pdf

⁶ https://www.ofgem.gov.uk/system/files/docs/2018/10/micro_and_small_business_engagement_survey_2018_report.pdf

⁷ [https://www.energy-uk.org.uk/files/docs/The_Future_of_Energy/2019/FutureofEnergy_ReportSection_Chapter1_04.19\(1\).pdf](https://www.energy-uk.org.uk/files/docs/The_Future_of_Energy/2019/FutureofEnergy_ReportSection_Chapter1_04.19(1).pdf)

⁸ Referred to as a "modular" approach to regulation:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819624/flexible-responsive-energy-retail-markets-consultation.pdf

with for their energy needs. This will be particularly important to implement consistent protections for customers in vulnerable circumstances, and provide all customers with the reassurance to enable a greater take up of innovative services.

If the ultimate goal of Smart Data Initiatives is cross-sectoral data-portability then BEIS may also wish to consider the merits of a wider, genuinely cross-sectoral regulatory approach to TPIs wider activities outside of Smart Data, and whether this would better protect consumers interacting with TPIs that offer services across various sectors.

We also note that the development of Midata in energy has to date been focused on domestic customers only. We believe that it would be prudent to continue this focus for its initial implementation, and allow the standard to evolve with the market over time, which could include incorporating microbusinesses or SMEs at a later date if supported by a robust benefits case.

15. What other options should we consider to ensure that consumers are protected when using TPPs?

As highlighted previously, BEIS should ensure that this work aligns with the Future Energy Retail Market Review workstream, and that of Ofgem's Microbusiness Review. Energy UK believes that to ensure robust consumer protections and a level playing field between market players there needs to be a level of uniformity in the approach taken to regulate those participants. This could be achieved, for example, by supporting Ofgem to issue licences for new activities in the short term, followed by a longer-term fundamental shift towards an activity-based approach to regulation.

If you would like to discuss the above or any other related matters, please contact me directly at steve.kirkwood@energy-uk.org.uk or on 0207 747 2931.