

DCC Review Phase 2: Governance and Centralised Registration Service Arrangements

Responding Party: Octopus Energy

Date: 16 July 2024

For the attention of: Jakub Komarek, DCC Oversight and Regulatory Review (Retail Systems and Processes)

1, What are your views on the presented options for the future DCC board composition? Do you agree with our analysis that Option 4 (majority independent model) is the most appropriate to take forward? Please state your reasoning.

We believe that the proposed model could work as part of a “purpose-driven, non-for-profit organisation”, depending on the recency and depth of knowledge represented on the board in the key areas of expertise (A5). However, we are concerned that such a model will prove more risk-averse rather than cost-averse, leading to extra costs for consumers. In addition, decisions that seek to balance cost vs risk within the DCC may lead to extra costs being incurred by suppliers which are potentially in excess of the DCC costs saved.

We note that a majority independent board may make decisions that lead to additional ex-ante costs, ex-post costs or disallowed costs. We are unclear who will carry responsibility for such categories of costs and whether this will expose the board to any shareholder response. We note the consideration of a vote of no confidence (Q13) to potentially address such concerns. However, we feel that such considerations should be at the heart of day-to-day board and executive decision making, rather than leading to such an ultimate sanction, where presumably problems would have brewed for some time, with potentially major consequences e.g. the redundancy of excess staff.

We would therefore wish to understand the form of board commitment and incentives to meet agreed ex-ante cost and performance management objectives, alongside the mechanisms by which holistic (i.e. DCC+suppliers) perspectives and associated business cases will be considered.

In the event that a “for-profit” licence model is considered we believe that an amended structure may be required. Any commercial shareholder/licensee will probably require clear areas of reasonable autonomy to deliver against their signed contract.

We believe that a reorganisation of contractual relationships within the DCC could simplify much of the uncertainty described above. Specifically, we believe that DCC might enter into a technology outsourcing agreement with a third party to deliver and maintain the known part of those systems delivering current business. This would be tendered on a ‘for profit’ basis following standard technology outsourcing business methodologies, thereby embedding such a contract within an overall not-for-profit DCC envelope. Those parts of DCC business which were too uncertain (e.g. re-use and new projects) would stay outside such a third party contract until sufficiently firm to be contracted by extension or tendered separately to other third parties.

Overall, we believe that the commencement of this new board, together with the uncertainty as to the nature of the eventual shareholder(s), the degree to which it should have a direct role in running such a major technology ecosystem (vs outsourcing) and how it will balance potentially conflicting requests mean that, whatever model is adopted, there may well be requests from stakeholders for modification. We believe that ensuring such future agility and responsiveness is probably more important than the starting structure.

2. What are your views on the current and proposed Licence requirements on Sufficiently Independent Directors? Do you agree that one or more of the current Licence-imposed Independence Requirements may be relaxed in favour of more discretion afforded to the Board?

We agree with relaxation in favour of more discretion in order to maximise the skills and experience available to the board.

3. Do you agree with our proposal that the Chair of the future DCC board should meet the requirements on 'Sufficiently Independent Directors' without exception?

We agree with this proposal as part of a "purpose-driven, non-for-profit organisation". In the event that a "for-profit" licence model is considered we believe that an amended approach may be required. Any commercial shareholder/licensee will probably require clear areas of reasonable autonomy to deliver against their signed contract.

4. What are your views on our analysis and proposal not to introduce additional requirements or restrictions on the size of the future Board and on the number of executive members and shareholder representatives?

We agree.

5. Do you agree with a possible requirement on the Board to possess expertise in certain core areas? Do you agree with the areas we have identified? What are your views on the implementation options?

We agree and strongly endorse this requirement.

We would recommend that the expertise in commercial contract management specifically includes major technology service outsourcing contracts.

We would also recommend that the core expertise include representation from those who have previously and recently sought to balance the cost, risk and customer impact of smart operations inside an energy supplier (i.e holistically across both DCC and suppliers). We presume that such individual(s) would no longer be employed by a supplier. Such expertise would be an effective way to translate independently the downstream consequences of DCC actions for the rest of the board.

6. Do you agree with our proposal to represent consumer voice via a requirement on the appointment of a Sufficiently Independent Director with

consumer advocacy experience?

We note the consumer experience of smart (seen through items such as bills, system reliability, home visits and data privacy) is a complex derivative of DCC actions which are essentially B2B in nature. We believe that expertise drawn from recent smart experience inside the energy supplier community is most likely to be able to translate DCC actions into potential consumer consequences for the rest of the board and therefore be a highly effective form of consumer advocacy.

We believe that there will be a continuing need to provide industry scrutiny of, and comment on, DCC actions outside of the formal shareholder obligations of DCC board members. This would probably be best addressed through updated versions of the SEC Panel and its subcommittees. These environments allow the views of all stakeholder groups to be discussed and presented to DCC.

7. What are your views on Ofgem's role in the Board appointment process? Do you agree with our proposal that the Authority could have a role in the appointment process of non-executive directors? Which option would provide the most appropriate and effective accountability framework, and Why?

We agree with Option 1 for the reasons outlined in the consultation.

8. What are your views on the role of DCC customers and other stakeholders in the Board appointment process? Do you agree with our proposal to provide representation for DCC customers on the Nomination Committee? What should be the role of an industry representative in such an Arrangement?

We support the proposal.

We believe that the commencement of this new board, together with the uncertainty as to the nature of the eventual shareholder(s), the degree to which it should have a direct role in running such a major technology ecosystem (vs outsourcing) and how it will balance potentially conflicting requests mean that, whatever involvement in nominations is decided, this is only really the start of a process. We believe that ensuring future structural agility and responsiveness of the board is probably more important than seeking to refine the starting point beyond these current proposals.

9. What are your views on our proposals for an additional requirement on the Chair's experience and Ofgem's role in the initial appointment of the Chair? In what other way should the appointment process for the Chair be different to that of other DCC Board members?

We support the proposals.

We believe that subsequent nominations and supporting processes will have a lot to learn from the initial tenure and that final proposals should enable this future agility.

10. What are your views on changes to the term of appointment of nonexecutive directors? Do you agree with our proposals to limit the initial term of appointment for non-executive directors to 3 years, and to allow for up to two reappointments with the total term limited to a maximum of 9 Years?

We support the proposals.

11. What are your views on the identified reputational incentives and associated enhanced regulatory requirements? How effective do you believe these incentives can be?

We recognise that the adoption of a not-for-profit model considerably limits the ability to use incentives to drive performance and cost improvement. This is of particular concern in an environment such as DCC where system cost and performance are not mature and not yet at acceptable levels. We further believe that reputational incentives alone may drive more risk-averse decisions, leading to excess costs for consumers.

Therefore, while we agree with the reputational incentives presented, we believe that incentives linked to clear financial objectives such as the suggested cost management incentive will be required.

We believe that by outsourcing, and hence segregating, the core systems part of the DCC responsibilities to a commercial third party this would considerably simplify the implementation of incentives.

12. What are your views on direct financial incentivisation of executive leadership and key staff? What would make those incentives effective? Please consider their interlink with the reputational incentives.

Given the scale and cost of DCC activities we believe that financial incentives will be necessary. We note that financial incentives must be sophisticated enough to avoid inefficient cost displacement from within the DCC to become extra costs for suppliers.

We believe that by outsourcing, and hence segregating, the core systems part of the DCC responsibilities to a commercial third party this would considerably simplify the implementation of incentives to the remainder of DCC responsibilities.

13. What are your views on the proposal to grant stakeholders the power to issue a (non-binding) motion of “no confidence”, its objective and requirements? If implemented, what should be the methodology for determining a qualified majority and distribution of votes among Stakeholders?

We believe that the design of such a highly formalised 'nuclear option' is very difficult. We believe that a much simpler appeals process, combined with the inclusion of a more agile approach to the board structural aspects described above would enable issues of varying severity to be considered and remediated when necessary, leaving Ofgem to implement full no-confidence measures if appropriate.

14. Do you agree with the identified priority areas of interim changes? Are there other governance changes that should be implemented in the Licence extension period?

We support the proposals. We note the consumer experience is a complex derivative of DCC actions (see A6). We believe that expertise drawn from recent smart experience inside the energy supplier community is most likely to be able to translate DCC actions into potential consumer consequences for the rest of the board and therefore be an effective consumer advocate.

15. What are your views on the possible retention of current Sufficiently Independent Directors on the Board of DCC2? What provisions may need to apply to facilitate this?

We support these proposals.

16. Do you agree with our proposal that it would be appropriate to remove provision of the Centralised Registration Service (CRS) from the DCC Licence and transfer the obligation to the Retail Energy Code (REC) to be delivered by RECCo?

We note the qualitative arguments presented in the consultation but request a formal impact assessment and cost benefit analysis in order to comment meaningfully on the proposal.

We believe that formal opinions from TABASC and the Security Subcommittee on this proposal would provide a valuable contribution to the discussion. In our mind such opinions should cover *inter alia*, the technical requirements (e.g. certificate management) to deliver the transition and the appropriate environment(s) for post-transition technical, change and incident management.

Once these technical steps have been documented, we would also like to see these included in the cost benefit analysis in order to understand how the cost savings, proposed for delivery under RECCo, compare with the cost of the transition and the additional costs that may need to be borne by RECCo.

17. What are your views on the considerations we have identified under option 1?

We would like to see these considerations supplemented with the additional information we have requested in A16.