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for all gas and electricity customers

Competition in connections – Consultation on UKPN's Competition Notice

Consultation

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Overview:

This consultation seeks views on the development of competition in UK Power Networks' (UKPN) Distribution Service Areas (DSAs). It follows the submission to us by UKPN of 'Competition Notices'[1] on 19 April 2013 on behalf of Eastern Power Networks plc (EPN), London Power Networks plc (LPN) and South Eastern Power Networks plc (SPN) in relation to six Relevant Market Segments (RMSs).

We currently protect the interests of consumers by regulating the margins that Distribution Network Operators can earn from their connections business.

We propose to lift price regulations for connection services where UKPN has demonstrated that effective competition exists by satisfying both the Legal Requirements Test and a Competition Test as set out in Part C of Charge Restriction Condition (CRC) 12[2] . We intend to make determinations on whether UKPN has satisfied these tests in six RMSs in each of its DSAs in August 2013.

In this document we highlight the information we are looking for to help us to assess whether effective competition exists in the six RMSs in each of UKPN's DSAs. UKPN's Competition Notices are available on our website as an associated document to this consultation.

[1] A Competition Notice is a Notice given by the licensee in accordance with Part D of Charge Restriction Condition (CRC) 12.
[2] CRC 12. Licensee's Connection Activities: Margins and the development of competition

Context

Our principal objective is to protect the interests of existing and future consumers. We consider that where competition is viable and effective it can protect customer interests better than regulation. Effective regulation in the connection market should allow customers to benefit from lower prices, innovation and better service.

In recent years, we have worked closely with the industry to remove barriers and limitation on the scope for competition in connections. In 2010, we introduced a package of measures to remove regulatory barriers to competition and to provide strong incentives for Distribution Network Operators (DNOs) to facilitate competition. These measures include:

- providing headroom to new entrants by introducing a four per cent regulated margin that DNOs must charge on contestable connection services in market segments where we consider competition to be viable;
- providing DNOs with the opportunity to have this price control lifted in segments of the market where they can demonstrate that competition can be relied upon to protect consumer interests (by way of submitting a Competition Notice); and
- an assurance that we will continue to monitor competition in the connections market (we will review the position and consider what action to take if a DNO fails to demonstrate effective competition by 31 December 2013).

To date we have issued decisions on five DNOs' Competition Notices – Electricity North West Limited on 21 November 2011, Northern Powergrid on 26 October 2012, UK Power Networks on 29 October 2012, Western Power Distribution on 25 February 2013, Scottish and Southern Energy Power Distribution on 29 April 2013 and Electricity North West Limited on 10 May 2013. Other than the Competition Notice submitted by UK Power Networks to which this consultation relates, we are currently considering one other Competition Notice submitted by Electricity North West Limited. Details of our previous determinations and the Competition Notices we are currently considering can be found on our website. [3]

In our previous determinations we have emphasised that we will not lift price regulation until we have sufficient evidence that customers' interests will be protected in its absence. If a DNO does not consider that it can provide evidence of effective competition in the whole of a Relevant Market Segment (RMS) it can propose an alternative market segment.

We have recently received an application from UKPN. This consultation seeks views on UKPN's application which relates to six RMSs in the three Distribution Service Areas (DSAs) covered by Eastern Power Networks plc (EPN), London Power Network plc (LPN) and South Eastern Power Networks plc (SPN).

This is UKPN's second application. As was the case with the first application, our determinations in this case will be based on the evidence presented in its Competition Notice and responses to this consultation.

[3] http://www.ofgem.gov.uk/Networks/Connectns/CompinConn/Pages/CompinCnnctns.aspx

Associated documents

UKPN's Competition Notices and decisions on previous Competition Notices
http://www.ofgem.gov.uk/Networks/Connectns/CompinConn/Pages/CompinCnnctns.aspx

DPCR5 Final Proposals - Incentives and Obligations
http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=348&refer=Networks/ElecDist/PriceCntrls/DPCR5

Special conditions of the Electricity Distribution Licence
http://www.ofgem.gov.uk/Networks/ElecDist/PriceCntrls/DPCR5/Documents1/CRCs%20master%20merged.pdf

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Executive Summary

We are seeking views and evidence by 1 July 2013 on whether we can have confidence in UKPN being constrained by pressures from actual or potential competitors if price regulation is lifted in the six RMSs in each of its DSAs.

Background

We have been working to facilitate competition in electricity connections since 2000. Unlike the replacement, reinforcement and maintenance of the existing network, some connection services are contestable. This means that new entrants to the market can compete with Distribution Network Operators (DNOs) operating in their regions to give customers a real choice over their connection provider and an opportunity to shop around to get a good service and value for money. We would expect competition to deliver benefits that are more difficult to achieve through regulation, such as innovation in the type of services on offer, a focus from providers on meeting customer needs and a choice for customers.

In general, however, we have been disappointed with the pace at which competition in the electricity connections market has developed. For this reason, at the last electricity distribution price control review (DPCR5), we revised regulatory arrangements to further facilitate competition. Previously, DNOs were prevented from earning a margin on connection activities. DNOs must now earn a margin of four per cent on contestable connection services in those relevant market segments where competition is considered viable. This is intended to create headroom to allow others to compete against the DNO.In addition, since the start of DPRC5 (April 2010), DNOs have been able to submit Competition Notices to request that price regulation be lifted in the Relevant Market Segments (RMSs) where they can show that effective competition exists.[4]

UKPN is applying for price regulation to be lifted in six RMSs:

<u>Metered Demand Connections</u>
- High Voltage (HV) work;
- HV and Extra High Voltage (EHV) work; and
- EHV and above work.

<u>Metered Distributed Generation (DG)</u>
- Low voltage (LV) work

<u>Unmetered Demand Connections</u>
- Local Authority work; and
- Other

UKPN's application covers its three licensed Distribution Service Areas (DSAs): Eastern Power Networks plc. (EPN), London Power Networks plc. (LPN) and South East Power

[4] As DNOs have an important role to play in removing barriers to entry, any DNO that fails to demonstrate effective competition by December 2013 will be reviewed by Ofgem and may subsequently be referred to the Competition Commission.

Networks plc. (SPN). We have four months from the date UKPN submitted its application, 19 April 2013, to determine whether to lift price regulation.

Considerations in determining whether to lift price regulation

In determining whether to lift price regulation, we will consider whether we can rely on actual competition or the threat of competition, rather than price regulation, to protect consumer interests. We will only lift regulation where we determine that effective competition exists. Furthermore, our previous decisions on DNOs' Competition Notices have demonstrated that we will not lift price regulation until we have sufficient evidence that customers' interests, in the whole of a RMS, will be protected in its absence. We will conduct a separate analysis of each of the six RMSs covered by UKPN's application in each of its DSAs.

One important indicator of whether competition is effective in each of the RMSs is UKPN's share of work carried out. Another is the number of alternative providers active in each market segment. UKPN's application suggests that it carries out a large share of connection projects in some segments where it considers that there is effective competition. While we will take into account UKPN's share of work in each RMS in assessing whether effective competition exists, we do not think that it should be considered in isolation as it can be an imperfect indicator of the effectiveness of competition. For example, a DNO may retain a high share by providing a competitive price or a high quality of service. In that case, the threat from competitors may be effective in limiting the prices that the DNO charges and/or encouraging it to innovate and improve service.

Equally, continued regulation in contestable services can have unintended consequences and stifle the scope for customers to realise the benefits, such as innovation, that competition can bring. For this reason, an approach that looks narrowly at market shares and retains price regulation until predefined thresholds have been met may not be in customers' best interests. Until we lift price regulation, we will continue to monitor the way the market works and customers will continue to be protected by competition law.

Respondents' views

For the reasons outlined above, we will consider a range of criteria in assessing whether effective competition exists. We will make our decision having considered the evidence in UKPN's Competition Notices and that provided by interested parties.

We would like to hear in particular from parties who purchase contestable connection services in the six RMSs across UKPN's DSAs. We would like to understand whether customers have effective choice between connections providers, whether they have the information they need to decide between alternative offerings and whether this has been, or is likely to be, successful in delivering improved service levels or more competitive prices (either from UKPN or from its competitors).

We also seek the views of those companies competing with UKPN or those who have done so, or who have considered doing so in the past. We would like to understand whether there are barriers to them entering or growing their market share in the RMSs covered by UKPN's application. In particular, we would like to understand whether UKPN responds appropriately to the needs of its competitors when it provides them with non-contestable services.

1. UKPN's Competition Notices

Chapter Summary

This chapter describes UKPN's Competition Notices, the process we will follow in considering whether the Legal Requirements Test and the Competition Test have been met and the structure of this consultation.

1.1. UKPN's Competition Notices serve as applications to have price regulation lifted on competitive connection activities in six of the RMSs set out in CRC 12 of the Electricity Distribution Licence.

1.2. On 19 April 2013 UKPN submitted Competition Notices[5] in respect of its licensed distribution networks:

- Eastern Power Networks plc (EPN);
- London Power Networks plc (LPN); and
- South Eastern Power Networks plc (SPN).

1.3. The Notices relate to the following six RMSs:[6]

<u>Metered Demand Connections</u>
- High Voltage (HV) work
- HV and Extra High Voltage (EHV) work
- EHV work and above

<u>Metered Distributed Generation (DG)</u>
- LV work

<u>Unmetered Connections</u>
- Unmetered Local Authority (LA) work
- Unmetered other work.

1.4. CRC 12 and our DPCR5 Final Proposals set out the process we must follow in assessing the Competition Notices submitted by UKPN. We must determine whether the Legal Requirements Test and the Competition Test (set out in CRC 12) have been met for each of the six RMSs in each of UKPN's DSAs.[7] We must make these determinations within four months of receiving UKPN's Competition Notices. CRC 12 requires us to consult with parties that we believe have an interest prior to making our determinations.

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[5] Whilst the licence requires DNOs to submit separate Competition Notices for each licensee, for administrative convenience we agreed that UKPN could submit a single document covering all three of its licensed areas. We will make separate determinations for each licensee.
[6] Appendix 4 sets out the details of all nine RMSs.
[7] The Legal Requirement Test and the Competition Test are set out in Appendix 3.

1.5. Our DPCR5 Final Proposals set out key issues that DNOs should consider in making their case. In addition, our previous decisions on DNOs' Competition Notices have demonstrated that we will not lift price regulation until we have seen sufficient evidence that customers' interests will be protected in its absence. The key issues set out in DPRC5 form the basis for UKPN's Competition Notices. These are:

- actual and potential competition: the current level of competition the DNO faces in each market segment and the scope for this competition to grow;
- price and transparency of pricing: the steps the DNO takes to ensure that customers have the information they need to make decisions between taking a service from the DNO or new entrant providers; and what the DNO is doing to ensure they do not discriminate between their own customers and new entrant providers when they price their services;
- promoting awareness of competitive alternatives amongst connections customers: the steps the DNO takes to ensure that customers are aware that they can go to other providers for the service they are requesting;
- competition in connections procedures and processes: the actions the DNO has taken to ensure that the procedures and processes they have in place for non-contestable services meet the needs of new entrants and are provided in a non-discriminatory manner;
- efforts to open up non-contestable activities to competition: what action the DNO has taken to extend contestability; and
- barriers to competition: other actions the DNO is taking to remove barriers to new entrants competing in their area.

1.6. We intend to publish our decision on the Competition Notices submitted by UKPN, with details of our determinations in respect of the six RMSs covered by the Notices, in August 2013.

Consultation responses

1.7. In making our determinations we will, amongst other relevant information, consider responses to this consultation.

1.8. We are required to make separate determinations for each of the RMSs and DSAs covered by UKPN's application.

1.9. **We ask respondents to this consultation, wherever possible, to submit their responses using the template at appendix one of this document.** In any case, we ask them to clearly set out to which of the RMSs and UKPN's DSAs each section of their response relates.

1.10. Unless consultation responses are marked confidential they may be posted on our website. Please note that it could prove difficult for us to use confidential information as evidence in coming to a determination. **If you consider your**

response to be confidential, in whole or in part, please contact us using the details on the front of this document.

1.11. Under the terms of the licence, we are required to make a determination within four months of receiving a Competition Notice from the licensee. To ensure that we fulfil these obligations the deadline by which consultation responses must be submitted to us is 1 July 2013. We consider that a six week consultation gives stakeholders sufficient time to consider documents and prepare responses.

Structure of this document

1.12. While interested parties are invited to respond to all of the questions posed in this consultation, we would particularly like to invite:

- **Customers** to consider the issues discussed in Chapter 2 (Customer awareness and ability to choose competitive alternatives) and the document summary at Chapter 6.

- **Existing/potential competitors** to consider the issues discussed in Chapter 3 (The potential for further competition) and the document summary at Chapter 6.

1.13. Chapter 4 presents a summary of UKPN's assessment of competitive activity and we seek views on the data provided in UKPN's Competition Notices.

1.14. Chapter 5 describes UKPN's current position against the Legal Requirements Test.

1.15. Appendix 1 provides a template to assist you in providing responses to the consultation document.

1.16. Appendix 2 gives an overview of the electricity connections market, our decision to introduce a regulated margin and the potential for price regulation to be lifted. It also discusses what we will consider in determining whether the Competition Test has been passed.

1.17. Appendix 3 outlines the Legal Requirements and Competition Test

1.18. Appendix 4 defines each of the nine RMSs.

1.19. Appendix 5 contains a glossary.

1.20. Appendix 6 contains a feedback questionnaire about this consultation.

1.21. We encourage all interested parties to read the document containing UKPN's Competition Notices which is available on our website as an associated document to this consultation.

1.22. We intend to publish our decision on the Competition Notices submitted by UKPN (with details of our determinations in respect of each of the RMSs in each of its DSAs) in August 2013.

2. Customers' awareness of and ability to choose competitive alternatives

Chapter Summary

This chapter seeks customers' views on their awareness of competitive alternatives. In particular, it asks whether customers are able to make informed decisions in choosing a connections provider and whether the competitive alternatives available to them provide the service and price they expect to receive.

When considering your responses to these questions, please consider your experiences, the actions that UKPN has undertaken and the actions that you consider it could reasonably undertake.

When considering your responses to these questions please only consider the six RMSs covered by UKPN's application. In your response please indicate the RMS(s) and UKPN's DSA(s) to which your experiences relate.[8]

Question 1: Are customers aware that competitive alternatives exist?

Question 2: Do customers have effective choice, ie are they easily able to seek quotations from competitive alternatives?

Question 3: Does UKPN take appropriate measures to ensure that customers are aware of competitive alternatives?

Question 4: Are quotations provided by UKPN clear and transparent? Do they enable customers to make informed decisions of whether to accept or reject a quote?

Question 5: Have customers benefitted from competition? Have they seen improvements in UKPN's price or service quality, or have they been able to source a supplier service or better price from UKPN's competitors?

2.1. We consider that for effective competition to exist, customers must have a real choice of connections providers. In determining whether this choice exists, in addition to the number of competitors active in each of the RMSs, we will consider –

- customers' awareness of alternative providers;
- the ability of customers to make informed decisions; and
- whether competitive alternatives to UKPN offer customers an effective choice of connections provider and the quality of service and/or value for money that they expect to receive.

[8] Wherever possible please provide your response using the template at appendix 1 of this document.

Number of competitive alternatives

2.2. UKPN reports in its Competition Notices the number of active competitors each RMS and for each DSA in the twelve months to March 2013. For the two unmetered segments, UKPN reports the number of ICPs that have 'letter of appointments' with relevant customers (Local Authorities, Highway Authorities and others) to carry out unmetered connections work. Table 1 sets out the relevant information.

Table 1: Number of active competitors, 12 months to March 2013

Relevant Market Segment	EPN	LPN	SPN
Number of competitors that have requested Point of Connection quotes			
Demand HV	21	20	17
Demand HV/EHV	8	7	10
Demand EHV and above	8	4	3
Distributed Generation LV	8	9	2
Number of providers servicing customers/agreements			
Unmetered Local Authority	7	4	3
Unmetered Other	4	2	3

Source: UKPN Competition Notice April 2013 and data provided by UKPN in response to clarification questions

2.3. We would expect customers in any RMS for which UKPN is seeking to pass the Competition Test to face an effective choice of competitive providers when they are seeking a connection.

2.4. We would like to understand if this is the experience of customers in these RMSs. Have they been able to obtain quotes from alternative providers? We are also interested in whether customers are confident that they have a real choice between connections providers.

Promoting awareness of competition

2.5. UKPN outlines a number of actions it has taken to make potential customers aware that alternative providers may carry out the contestable elements of a project. These include:

- UKPN's website includes an area dedicated to providing information on competition in connections. Following testing with competitors, UKPN reviewed the layout of that area in March 2011 with a view to making navigation easier.

- UKPN has prepared a factsheet entitled "Did you know you have a choice?" which explains to customers that they can seek quotes for the contestable elements of work from alternative providers. This factsheet is available from UKPN's website and is sent to those customers that request UKPN for an application form to be posted or emailed to them. (UKPN states that around 85 per cent of customers make their application online, without first contacting UKPN). The factsheet is enclosed with all "all works" quotes that UKPN sends out.

- UKPN has carried out staff awareness programmes on the nature of competition in connections and on the behaviour required of them.

2.6. UKPN reports the results of several surveys it has carried out with customers since 2011. Of the findings from these surveys that are reported in the Competition Notice, some relate directly to the degree to which customers are aware of competitive alternatives.

- In a February 2013 survey of local authorities, 83 per cent agreed "to a great extent or completely" that competitive alternatives are available to them when appointing a connection provider.

- UKPN reports the results of surveys with one-off customers and with repeat customers that were carried out in June 2012 and March 2012 respectively. These surveys report that around 60 of the one-off customers and around 70 per cent of repeat customers had received a copy of the factsheet "Did you know you have a choice?" and understood that competitive alternatives were available. The number of respondents to these two surveys was small (five repeat customers and seven one-off customers responded).

- In an online survey of Highway Services customers carried out in February 2013, 94 per cent of respondents were completely, to a moderate or great extent confident that, if Ofgem were to give UKPN approval to set prices as if UKPN were in a freely competitive market, they could seek alternative competitive offerings from other providers.

2.7 We seek customers' views on the points made by UKPN. In particular, we are interested in whether customers consider that UKPN takes appropriate measures to make customers aware of the competitive alternatives available to them — for example, in making information available to customers at the time of seeking a quote. When responding, please consider your experiences, the actions that UKPN has undertaken and the actions that you consider it could reasonably undertake.

Transparency of pricing and giving customers the ability to choose

2.8 To be able to make an effective choice, we consider that customers should be able to compare the prices that will be charged by the incumbent DNO with those that may be charged by an alternative provider.

2.9 UKPN states that, in response to customer feedback, it implemented in June 2012 system changes to provide a finer breakdown of the non-contestable charges in its quotes. UKPN plans to extend that level of detail to the contestable and dual funded elements of charges in its quotes. It expects this to be completed by June 2013.

2.10 UKPN reports the findings from a March 2012 survey of one-off customers. This found that 72 per cent of respondents understood what was included in the price quoted either to a great extent or completely. There were seven respondents to this survey.

2.11 UKPN states that it is consistent in its pricing, not applying any difference between the pricing of elements of work for an all-works quotes and the pricing for a Point of Connection quote.

2.12 UKPN's quotes, whether for all works or a Point of Connection, are valid for 90 days, subject to the provisions of interactive quotes that apply to quotes with a requested capacity above 1MVA. The validity period of an outstanding quotation may be shorter if a new quote subsequently issued by UKPN interacts with the outstanding quotation. Where such interactivity is identified, UKPN will notify the parties with relevant outstanding quotes. The validity period of outstanding quotes will be reduced to 30 days from the date of UKPN's notification, where more than 30 days is still outstanding.

2.13 UKPN states that since October 2012 it began to develop "convertible quotes", whereby the customer is able to either accept only the non-contestable elements of an all works quote or facilitates the transfer of that element for acceptance by an alternative provider. UKPN states that this makes it easier for customers and competitors where a customer who has been quoted an all works quote subsequently decides to appoint an alternative provider to carry out the contestable elements of work. UKPN started a pilot for convertible quotes for Demand HV in the SPN area in November 2012. UKPN has told us that it aims to complete the roll out in SPN by 31 May 2013, in EPN by 30 June 2013 and in LPN by 31 July 2013, though the precise timing will depend on the amount of IT work and training of staff that will be needed. UKPN is also due to roll out its convertible quote arrangements for Distributed Generation customers. Its current plans are to complete that roll out in EPN by 30 June 2013, in SPN by 31 July 2013 and in LPN by 31 August 2013. UKPN states that the timing for the roll out of convertible quotes to the Metered Demand Low Voltage segment is dependent on a feasibility assessment of the system changes and training requirements.

2.14 UKPN also states that where a customer is not fully aware of the process they provide advice on where to find a competitor. UKPN state that it is quite usual for a customer to engage an ICP and discuss their requirements before asking for a non-contestable quotation.

2.15 We seek the views of customers and competitors on these points made by UKPN. In particular:

- Are quotes provided by UKPN for connections clear and transparent?
- Do UKPN's quotes enable customers to make an informed decision to accept or reject a quote?

- Does the 90-day validity period on UKPN quotes allow customers to consider competitive alternatives?

- Will the roll out of "convertible quotes" make customers more likely to consider competitive alternatives?

Benefits

2.16 In addition, we are interested in whether customers consider that they have benefitted from competition. Such a benefit could be seen, for example, either in improvements in UKPN's services or charges in the face of competition or by new entrants providing a superior level of service and/or a better price.

3 The potential for further competition

Chapter Summary

This chapter seeks views of existing and potential competitors on the potential for future competitive activity in each RMS. It considers the number of competitors already in the market, potential barriers to the further growth of competition and what factors influence competitors' decisions to enter an RMS.

Question Box

When considering your responses to these questions, please consider your experiences, the actions that UKPN has undertaken and the actions that you consider it could reasonably undertake.

When considering your responses to these questions please only consider the six RMSs covered by UKPN's application. In your response please indicate the RMS(s) and UKPN's DSA(s) to which your experiences relate.[9]

Question 1: Does the level of competitive activity in the RMSs show that there is the potential for further competition to develop?

Question 2: Consider the organisational structure of UKPN's business and its procedures and processes:

- ➔ how do they compare to those you encounter elsewhere in the gas and electricity markets or other industries? Do they reflect best practice?
- ➔ do they enable competitors to compete with the timescales for connection (from quote to energisation) offered by UKPN? Or do they offer UKPN any inherent advantage over its competitors or prevent existing competitors from competing with them effectively?
- ➔ do they assist, obstruct or delay connections providers entering the RMSs?

Question 3: Are the non-contestable charges levied by UKPN for statutory connections in the RMSs consistent with those levied for competitive quotations? Are they easily comparable with competitive quotations?

Question 4: What factors are key influences on the development of competition in the RMSs? In particular, if you are an existing/potential competitor:

- ➔ what is the potential for competitors to enter new RMSs, or grow their share of an RMS in which they already operate?
- ➔ are there are any types of connection in any of the RMSs, or geographic locations in UKPN's DSAs, that by their nature, are not attractive to competition? Please explain your response.

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[9] Wherever possible please provide your response using the template at appendix 1 of this document.

3.1 While we will consider current levels of competition when determining whether to lift price regulation in each of the six RMSs, it will only be considered alongside the potential for further competition to develop.

3.2 In this chapter we ask for competitors' views on the potential for further competition to develop in each of the six RMSs in UKPN's three DSAs. In particular, we ask for views on the ease with which competitors can enter and compete, whether there are barriers to competition and ask about UKPN's efforts to open up non-contestable activities to competition. We also invite views on how competition might develop in the future.

Ease of entering and competing in the market

The number of competitors active in the market

3.3 We consider that the ease with which competitors can enter the market and the number of competitors leaving the market are indicators of the potential for further competition to develop.

3.4 In its Competition Notice UKPN provided details of the number of competitors active in each market segment in the period April 2012 to March 2013. A high level summary of the information provided on competitors requesting and accepting quotations can be found in the section on UKPN's assessment of existing competitive activity. For the Metered Demand HV RMS, the information includes the number of new entrants (defined as those entering the market since January 2012) winning work over the same period.

3.5 We ask existing/potential competitors whether they consider that the level of competitive activity in each of the RMSs in each of UKPN's DSAs in itself shows that there is the potential for further competition to develop.

Barriers to effective competition

3.6 We consider that it is important to look at whether barriers to competition exist in the market that:

- prevent competitors from competing effectively in each of the RMSs (for example, barriers that may make it difficult for competitors to compete with UKPN in terms of service or price); or

- prevent further competition in each of the RMSs (for example, barriers that may make entering an RMS unattractive, or barriers that obstruct or delay entry to an RMS in the area).

3.7 We are not only considering potential barriers that are within UKPN's control to remove, but also natural barriers or regulatory barriers that may obstruct competition from developing further.

3.8 UKPN's Competition Notice sets out the actions that UKPN has taken to address potential barriers to competition that have been raised in a number of forums, including:

- in work developed by the Competitive Network Association (CNA);

- those identified by members of the Electricity Connections Steering Group (ECSG); and
- in a series of workshops with competitors, organised in November 2010, February 2011 and November 2012, the last of these reflecting points raised in our decision on UKPN's Competition Notice of 4 July 2012.

3.9 We invite respondents' views on the existence of barriers to compete in any of the six RMSs in the three UKPN areas. We also invite views too on the effectiveness of the measures taken by UKPN to address some of the potential barriers, as described in its Competition Notices.

Availability of guidance and information for ICPs/IDNOs

3.10 As identified by the CNA, an alternative provider may be impeded from competing with a DNO if the DNO makes it difficult for the provider to access information that it requires to develop and deliver its own offer. This information can refer for example to the DNO's design policy documents, to its codes of practices, method statements or to material specifications.

3.11 UKPN describes in its Competition Notices the actions it has taken to address this potential concern.

3.12 One area where UKPN states it has made progress relates to the granting of access to network records, an issue UKPN reports as being a concern to some competitors. UKPN states that, following negotiations with Ordnance Survey, competitors can now have online access to UKPN's plans and diagrams for the purpose of identifying points of connection to UKPN's network. UKPN states that competitors using this service had access to network record plans from January 2012; and that low voltage operational diagrams, showing the operational configuration of UKPN's low voltage network, were available from November 2012 for EPN and SPN and from February 2013 for LPN.

3.13 UKPN describes in its Competition Notices the progress it has made to improve the access to, and availability of, G81 documentation. It has created a new online G81 library containing "clean" versions of relevant documents, including material specification, design and planning, installation and records, and legal documents.

3.14 UKPN states that it has made progress in drafting a full set of EHV standards and that it plans to publish these in May 2013. For distributed generation, UKPN plans to publish standards and drawings by July 2013. UKPN states that in the interim period, competitors are able to request guidance from their design team or from their competition mailbox which is accessible directly from the section of UKPN's website that contains the G81 documents.

Service and response times

3.15 Both the ECSG and the CNA have identified the time taken by DNOs in general as a potential barrier to competition. More specifically, they raised the concern that DNOs may not take the same level of care in dealing with activities that lie outside the scope of their licence obligations on guaranteed service standards (SLC15).

3.16 We recognise that unduly long timeframes to handle requests by alternative providers might hamper the ability of alternative providers to compete with a DNO. Uncertainty about these timeframes might also increase the risk — in the eyes of the final customer — of using an alternative provider.

3.17 UKPN state that they treat competitors in the same manner as all other customers of non-contestable services. UKPN state that they have sought, and continue to maintain, engagement and regular two-way feedback with these customers through a variety of mechanisms, including workshops, sub-groups, newsletters, emails and a competition question and answer service.

3.18 UKPN states that it has carried out several initiatives to improve the efficiency its non-contestable activities. These include implementing in April 2011 a process of "visible workflow tracking" whereby the competition in connections team "hold a weekly review of all work, aided by a visual tool that tracks the status of their projects and enables them to prioritise workload." Other examples referred to by UKPN include:

- UKPN's design acceptance process allows for acceptance to be granted subject to the correction of minor errors or omissions, minimising delay to the customers.
- UKPN's agreement with an IDNO competitor to agree a generic IDNO substation design arrangement that can be used in a range of network connections situations; the IDNO will be able to identify the generic design in its design submission so that UKPN designers will know that the arrangement and associated materials have already been approved.
- A recent review of processes associated with live jointing to unmetered LV mains that UKPN states has simplified and automated the request and authorisation process.
- The implementation of a new process in December 2011 for ICPs to obtain consents and easements.
- The implementation of a new approach to IDNO consents. This new approach was piloted with one IDNO in 2011 and UKPN states it is waiting for IDNOs' sign-off of the most recent version of the approach before full implementation.

Contractual arrangements for the adoption of assets built by ICPs

3.19 The ECSG identified that the arrangements put in place by DNOs in relation to the adoption of assets built by ICPs is a potential barrier to competition. In particular, the ECSG raise the issue of security arrangements (bonds) to protect the DNO against any liability in case there is a fault in the adopted network. This is not specific to UKPN.

3.20 UKPN states that it undertook a major review of its non-contestable construction and adoption agreements.

3.21 With respect to metered work, UKPN states that it has produced standardised terms and conditions that are in line with its Section 16 agreements.

3.22 In relation to unmetered work, UKPN describes an approach it implemented in April 2012 which is designed to make it easier for local authorities and ICPs to operate. The approach involves the creation of a pair of agreements, one between the asset owner and UKPN, and the other between the ICP and UKPN. Templates of these agreements are available online. A local authority that has signed an Asset Owner Agreement with an ICP can procure connection services from any of the ICPs that have a Contractor Agreement with UKPN, with no need for further negotiations of tripartite or bilateral agreements. Testimonials included within UKPN's application are positive about this approach. UKPN states that as of March 2013 there were 40 Asset Owner Agreements in place or in the process of being finalised.

Inspection and monitoring of assets built by ICPs

3.23 The ECSG has raised the issue of inspections and monitoring of assets built by ICPs as a potential barrier to competition. In particular, it questioned the proportionality of the cost and time taken by DNOs to inspect these assets.

3.24 This is not specific to UKPN. In fact, the issue does not seem to arise in the feedback from customers and competitors that UKPN reports in its Competition Notice. UKPN states that it has reviewed its audit and inspection regime but gives no details of that review; it does not describe what elements were reviewed and what changes, if any, were made to the audit and inspection regime.

Arrangements for obtaining land rights

3.25 The CNA has identified the process of obtaining land rights when an ICP or IDNO carries out the contestable work as a potential barrier to competition. According to the CNA, DNOs can be slow to initiate the process for securing leases, easements etc and slow to progress them once begun. This can frustrate competitors as DNOs require all the legal agreements to be in place before they will energise the new connection.

3.26 Earlier in this section, we gave examples of actions that UKPN has taken to improve the efficiency of dealing with alternative providers, the new approach it has implemented for ICPs to obtain consents and easements and the new approach it proposes to implement for IDNO consents. UKPN reports that the latter of these approaches was presented by a representative of the CNA as "an example of best practice". Both of these new approaches apply to all metered demand and generation RMSs in all three DSAs.

3.27 UKPN states that following customer feedback, it has arranged for all three of UKPN's third party legal providers to create web portals that will contain information on the progress of live projects. The portals will be accessible to competitors and are to become available from May 2013.

Consistency of charges

3.28 A potential barrier to competition will arise if there are differences between point of connection quotes and all works quotes in the charges set by the DNO for the same non-contestable work. This may place an alternative provider at an undue disadvantage when competing with the DNO for work.

3.29 UKPN states that all "source price units are identical for all non-contestable and contestable work" regardless of whether the quote is for a point of connection or for an all works project. UKPN explains that both types of quotes are created from the same source of cost components.

Other potential barriers

3.30 The potential barriers highlighted by the CNA and the ECSG include others that we have not discussed above, including:

- Developing ongoing relationships (DNOs are often seen to be poor at "soft skills", eg communication, cooperativeness, relationship with competitors); and
- Dispute resolution (competitors raised concerns that the length of time taken to resolve disputes can leave them unable to compete effectively).

3.31 We seek respondents' views on the extent to which they consider the procedures and processes UKPN has put in place and identified in its Competition Notice to be sufficient to enable competitors to compete effectively. In particular, we seek competitors' views on –

- Does UKPN enable alternative connections providers to compete with its own connections timescales (from quote to energisation)? Or does UKPN have any inherent advantage or prevent existing competitors from competing effectively?
- How does UKPN assist, obstruct or delay connections providers entering RMSs?
- Do any of the potential barriers to the development of competition that have previously been identified still exist in the three UKPN DSAs and in the six RMSs?

The future growth of competition

3.32 We are interested in whether existing or potential competitors intend to expand or start their business in any of the RMSs in any of the three UKPN DSAs. We are also interested in the factors that competitors take into consideration in deciding whether to compete with UKPN in each RMS.

3.33 We note that you may consider this information to be confidential. If you do, please provide it in a separate annex to your response and clearly mark it as confidential.

The potential for competition to develop

3.34 Further to the potential barriers to competition discussed earlier in this chapter, we note that the potential for competition to develop in each RMS may be influenced by a number of factors, for example the level of contestable service offered by UKPN to its customers, economic conditions and the level of margin charged by UKPN.

3.35 We seek views of existing and potential competitors on what factors they consider are key influences on the development of competition in each of the RMSs in UKPN's DSAs.

3.36 For each RMS, we also seek the views of existing and potential competitors in UKPN's DSAs on the potential for them to enter new RMSs, or to grow their business in the RMSs in which they currently operate, within the next five years.

3.37 We also seek existing and potential competitors' views as to whether there are any types of connection in any of the RMSs, or geographic locations in UKPN's DSAs, that, by their nature, are not attractive to competition. If you consider some connections/areas are not attractive to competition, why is that the case?

Efforts to open up non-contestable activities to competition

3.38 Connections works are split between works that are contestable (competitive) and those that are non-contestable (can only be completed by the DNO).

3.39 In our December 2011 consultation on expanding the scope of contestable activities we stated our belief that opening up non-contestable activities to competitors may provide further opportunities and incentives for competition to develop in the connections market. This is because it reduces competitors' reliance on DNOs to provide essential services and it increases the scope of works for which competitors can compete.

3.40 We consider that DNOs should engage with the industry to consider where it is possible to further extend contestability.

3.41 UKPN reports on its efforts to expand the scope of contestable work.

3.42 Live jointing to LV underground radial mains was formally transferred to a contestable activity on 26 October 2012. UKPN states that this has "facilitated significant volumes of live jointing work to now be completed by ICPs particularly in respect of Highway Services connections."

3.43 UKPN states that it did not extend contestability relating to LV live jointing to its LPN "normally interconnected networks". UKPN says this refers to a small proportion of the LPN network in central London where additional operational work is required prior to carrying out any live jointing. UKPN recognises that ICPs wish to compete in that area and states that it is exploring "options to provide a 'fusing and linking' (ie 'operational activities') service that would allow live jointing to become contestable in this area."

3.44 UKPN reports on various pilot projects to extend contestability to other areas. These include pilot projects on -

- Part funded reinforcement. UKPN has agreed with an ICP to carry out a pilot to include part funded reinforcement work.
- LV point of connection design. This has been set up with a specific ICP and others have been invited to take part. Under the pilot, competitors will propose the point of connection and the design of the extension asset.
- Standard designs. A pilot with a specific ICP whereby if the ICP submits a standard design for approval, the approval process will be simplified as a significant part of the design will have previously been approved.

3.45 UKPN states that it has also developed pilots for HV final connections, concerning jointing of new high voltage cables to the existing UKPN high voltage network. Pilots have been available to ICPs since September 2012. UKPN reports that, so far, only one ICP has joined this pilot. UKPN states that it aims to submit an application to Ofgem in May 2013 to allow ICPs to carry out HV jointing to existing mains.

3.46 UKPN states it has received interest from some competitors in making new connections to LV overground mains contestable, and that it will consider whether, in principle, it is appropriate to organise a pilot covering this activity.

3.47 UKPN states that it has informed stakeholders that it is prepared to consider offering those elements of contestable work that alternative providers do not wish to provide. UKPN has started with the civil design of non-standard substation, following feedback from competitors. UKPN also allows for split contestability in relation to network extension design and specialist minor works (eg the installation of metering current transformers and remote control/automation equipment).

3.48 We seek views on UKPN's activities to open up non-contestable activities to competition. In particular, we seek views on how UKPN engages with stakeholders in considering the extent of contestability and in developing procedures and processes (at the trial stage and for newly contestable activities) that promote competition.

3.49 We ask existing and potential competitors whether they consider the extension of contestability is likely to stimulate further competition in any of the RMSs in UKPN's DSAs.

4 UKPN's assessment of existing competitive activity

Chapter Summary

This chapter presents a summary of the information provided by UKPN to support its assessment of existing competitive activity in each RMS and seeks views from interested parties.

Question Box

Question 1: Do you agree with the methods used by UKPN to assess the level of competition in each of the RMSs covered by its application? In particular, do you consider that the data provided gives a clear indication of the current level of competitive activity in each RMS?

Question 2: In each RMS, do you consider that competitive activity is at a level that in itself indicates that effective competition exists? In each RMS, do you consider that the coverage of existing competitive activity extends across the segment?

4.1 In this chapter, we provide a summary of the information provided by UKPN in its Competition Notices. We are seeking views on this information and on the level of competitive activity in each RMS.

4.2 The data presented in UKPN's Competition Notices mainly relates to the 12 month period to March 2013.

4.3 UKPN has presented the following information on competitive activity within each RMS:

- The overall size of the market by value. For metered demand and DG LV market segments, UKPN has estimated the total value of projects won by competitors using their market share by connected load. For example, if the total value of work won by UKPN is £4 million and it has 80 per cent market share by connected load, the estimated overall size of the market is £5 million.

- The market shares of UKPN and its competitors by connected load (kVA).

- The number of ICPs/IDNOs that were issued Point of Connection quotes, and the number of ICPs/IDNOs that accepted such quotes.

4.4 For the Metered Demand HV RMS, we present the average load of projects in the Metered Demand HV RMS carried out by UKPN and by competitors, calculated using information provided by UKPN in its Competition Notice.

4.5 The tables below present the data for each RMS. These are based on data in the UKPN Competition Notices and on data provided by UKPN in response to clarification questions. We encourage interested parties to refer to UKPN's Competition Notice for full details of its data analysis.

Table 2: Existing competitive activity – Metered Demand HV, 12 months to March 2013

Metered Demand HV RMS	**EPN**	**LPN**	**SPN**
Size of RMS			
Total size by value	£42 million	£52 million	£36 million
Total size by load (kVA)	194,695	260,970	98,446
Total size by jobs (numbers)	568	266	260
UKPN share of the RMS			
UKPN share by load and value	63%	68%	65%
UKPN share by jobs	85%	70%	85%
Analysis of project values			
Average load of UKPN jobs (kVA per job)	255	966	287
Average load of ICP/IDNO jobs (kVA per job)	829	1,016	895
Activity by ICP/IDNOs			
Number of ICPs/IDNOs requesting quotes	21	20	17
Number of ICPs/IDNOs successful in winning work	19	10	11
Number of new entrants winning work (those entering in or after January 2012)	4	1	3

Table 3: Existing competitive activity – Metered Demand HV/EHV, 12 months to March 2013

Metered Demand HV/EHV RMS	**EPN**	**LPN**	**SPN**
Size of RMS			
Total size by value	£6 million	£1 million	£0
Total size by load (kVA)	30,053	4,500	0
Total size by jobs (numbers)	5	2	0
UKPN share of the RMS			
UKPN share by load and value	85%	0%	N/A
UKPN share by jobs	60%	0%	N/A

Activity by ICP/IDNOs			
Number of ICPs/IDNOs requesting quotes	8	7	10
Number of ICPs/IDNOs successful in winning work	2	2	0

Table 4: Existing competitive activity – Metered Demand EHV and above, 12 months to March 2013

Metered Demand EHV and above RMS	**EPN**	**LPN**	**SPN**
Size of RMS			
Total size by value	N/A	N/A	£0
Total size by load (kVA)	135,806	9,300	0
Total size by jobs (numbers)	4	1	0
UKPN share of the RMS			
UKPN share by load and value	0%	0%	N/A
UKPN share by jobs	0%	0%	N/A
Activity by ICP/IDNOs			
Number of ICPs/IDNOs requesting quotes	8	4	3
Number of ICPs/IDNOs successful in winning work	3	1	0

Table 5: Existing competitive activity – DG LV RMS, 12 months to March 2013

DG LV RMS	**EPN**	**LPN**	**SPN**
Size of RMS			
Total size by value	£50,000	£6,000	£30,000
Total size by load (kVA)	250	155	143
Total size by jobs (numbers)	5	4	3
UKPN share of the RMS			
UKPN share by load and value	20%	61%	65%
UKPN share by jobs	60%	50%	67%
Activity by ICP/IDNOs			
Number of ICPs/IDNOs requesting quotes	8	9	2
Number of ICPs/IDNOs successful in winning work	2	2	1

Table 6: Existing competitive activity – UMC LA RMS, 12 months to March 2013

Unmetered Local Authority RMS	**EPN**	**LPN**	**SPN**
Total size of RMS by value	£3.1 million	£5.1 million	£4.9 million
UKPN share of the RMS by value	82%	79%	35%

Table 7: Existing competitive activity – UMC Other RMS, 12 months to March 2013

Unmetered Other RMS	EPN	LPN	SPN
Total size of RMS by value	£1.8 million	£1.0 million	£0.7 million
UKPN share of the RMS by value	49%	63%	91%

4.6 For the two unmetered RMSs, UKPN reports data on the split between UKPN and alternative providers of the value of work in each of the years since 2007-08. UKPN's share is shown in the tables below.

Table 8: Unmetered Local Authority RMS: value and split of work, 2007-08 – 2012-13

	Value of all work in segment	UKPN's share of work (by value)
EPN		
2007-08	£3.4 million	100%
2008-09	£4.3 million	100%
2009-10	£3.6 million	100%
2010-11	£3.1 million	100%
2011-12	£3.9 million	77%
2012-13	£3.1 million	82%
LPN		
2007-08	£4.2 million	98%
2008-09	£5.1 million	97%
2009-10	£6.9 million	98%
2010-11	£5.9 million	89%
2011-12	£5.9 million	92%
2012-13	£5.1 million	79%
SPN		
2007-08	£2.6 million	100%
2008-09	£3.1 million	100%
2009-10	£3.4 million	99%
2010-11	£2.5 million	99%
2011-12	£4.9 million	60%
2012-13	£4.9 million	35%

Table 9: Unmetered Other RMS: value and split of work, 2007-08 – 2012-13

	Value of all work in segment	UKPN's share of work (by value)
EPN		
2007-08	£3.0 million	92%
2008-09	£8.6 million	96%
2009-10	£5.0 million	92%
2010-11	£3.7 million	88%
2011-12	£1.1 million	75%
2012-13	£1.8 million	49%
LPN		
2007-08	£2.6 million	100%
2008-09	£2.9 million	100%
2009-10	£3.3 million	100%
2010-11	£3.4 million	100%
2011-12	£1.1 million	78%
2012-13	£1.0 million	63%
SPN		
2007-08	£1.1 million	100%
2008-09	£1.9 million	92%
2009-10	£5.0 million	73%
2010-11	£3.2 million	90%
2011-12	£0.5 million	98%
2012-13	£0.7 million	91%

5 UKPN's compliance with the legal requirements test

Chapter Summary

This chapter contains our assessment of the position of Eastern Power Networks plc (EPN), London Power Networks plc (LPN) and South Eastern Power Networks plc (SPN) against the Legal Requirements Test.

The Legal Requirements Test

5.1 CRC12 and the DPCR5 Final Proposals Document set out a Legal Requirements Test that must be considered in conjunction with the Competition Test when we determine whether to lift price regulation in any RMS.

5.2 Compliance with the Legal Requirements Test is a necessary pre-condition for passing the Competition Test. The legal requirements set out in the test are for the DNO to have no enforced breaches in the given regulatory year of any of the five strands detailed below:

- Standard Licence Condition (SLC) 12.6(c) (Requirement to offer terms for use of system and connection);
- SLC 15 (Standards for the provision of Non-Contestable Connection Services);
- SLC 15A (Connections policy and connection performance);
- SLC 19 (Prohibition of discrimination under Chapters 4 and 5; and
- The Competition Act 1998.

UKPN's current position

5.3 For the purposes of this assessment of UKPN's Competition Notice, submitted on 19 April 2013, the relevant regulatory year is 2013-14 which runs from 1 April 2013 to 31 March 2014.

5.4 Whilst the 2013-14 regulatory year is yet to run its course, there are currently no enforced breaches against Eastern Power Networks plc, London Power Network plc or South Eastern Power Networks plc against any of the five strands of the Legal Requirements Test.

Future compliance with the Legal Requirements Test

5.5 If Eastern Power Networks plc (EPN), London Power Networks plc (LPN) and South Eastern Power Networks plc (SPN) no longer meet the Legal Requirements Test after price regulation has been lifted, we could issue a clawback direction under Special Licence Condition CRC 12.40. The clawback direction would require EPN, SPN or LPN to pay back any relevant charges in excess of the four per cent regulated margin allowance.

6 Summary

Chapter Summary

This chapter summarises the issues discussed in this consultation. It seeks views from customers and existing and potential competitors on whether, taking all of the issues discussed into consideration, price regulation should be lifted in each RMS.

Question box

When considering your responses to these questions please only consider the RMSs covered by UKPN's application. In your response please indicate the RMS and DSA to which your experiences relate. [10]

Question 1: Do you consider customers have an effective choice of connections provider? In particular, do you feel that levels of choice, value and service will be protected and will improve if the restriction on UKPN's ability to earn a margin is removed?

Question 2: Do you consider that there is scope for competitors to grow their market share, (for example if UKPN put up its prices or if its quality dropped) or are there factors constraining this?

Question 3: Do you consider that there is scope and/or appetite for new participants to enter the market? Do you consider that new entrants would be able to provide similar or better services than existing participants or are there factors constraining this?

Question 4: Given your overall view of UKPN, do you consider that we can have confidence in them to operate appropriately in the event that price regulation is lifted?

Question 5: Do you consider that there are factors not addressed in this consultation that should be taken into consideration in determining whether price regulation should be lifted?

6.1 As discussed throughout this document, we consider that effective competition should not be determined by looking at market share data alone.

6.2 We note that UKPN retains a large proportion of the market in some of the RMSs for which it seeks price regulation to be lifted. However, we also recognise that price controls may limit the attractiveness of a market to new entrants and that the current level of regulated margin may be set too low and may not enable third parties to compete effectively.

6.3 We reiterate that the intention of our assessment is to assess whether, in the event that price regulation is removed, competition could be relied upon to protect customers' interests by delivering choice, quality and value for customers. We ask respondents to consider whether, on balance, consumer interests in each RMS are

[10] Wherever possible please provide your response using the template at appendix 1 of this document.

better protected by regulation than they would be by competition. We also remind respondents that if price regulation is lifted in any RMS, we will continue to monitor UKPN's compliance with competition law and we will take seriously any evidence of anti-competitive behaviour.

6.4 We seek interested parties' responses to the questions posed throughout this document. In particular we seek customers' and existing and potential competitors' views on the following:

- Is there currently effective choice for customers in each RMS covered by UKPN's Competition Notice? In particular, do customers feel that levels of choice, value and service will be protected and will improve if the restriction on UKPN's ability to earn a margin is removed?

- Is there scope and/or appetite for competitors to grow their market share in the RMSs covered by UKPN's application (for example, if UKPN put up its prices or if its quality dropped) or are there factors constraining this?

- Is there scope and/or appetite for new participants to enter the RMSs covered by UKPN's application? Would they be able to provide similar or better services than existing participants or are there factors constraining this?

- Given your overall view of UKPN, can we have confidence in it to operate appropriately in the circumstance that price regulation were lifted?

6.5 We also seek interested parties' views as to whether there are factors not addressed in this consultation that should be taken into consideration in determining whether price regulation should be lifted in each of the RMSs covered by UKPN's application.

6.6 In conclusion, we encourage all interested parties to read UKPN's Competition Notice which is available on our website as an associated document to this consultation.

6.7 We would like to remind interested parties that since we are required to make separate determinations for each RMS in each UKPN DSA, responses to this consultation should be drafted in such a way that they clearly set out to which RMS(s) and DSA each section of the response relates. We also ask that, wherever possible, interested parties provide evidence to verify their claims.

Appendices

Index

Appendix 1 - Consultation Response and Questions

1.1. Ofgem would like to hear the views of interested parties in relation to any of the issues set out in this document.

1.2. We would especially welcome responses to the specific questions which we have set out at the beginning of each chapter heading and which are replicated below.

1.3. If you have any questions on this document please contact:

James Veaney
Head of Distribution Policy
Ofgem, 9 Millbank, London, SW1P 3GE
0207 901 1861
Connections@Ofgem.gov.uk

1.4. Responses should be sent, preferably by e-mail by 1 July 2013 to the address above.

1.5. Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website www.ofgem.gov.uk. Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

1.6. Respondents who wish to have their responses kept confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. Respondents are asked to put any confidential material in the appendices to their responses.

1.7. Next steps: Having considered the responses to this consultation, we intend to publish our decision in relation to UKPN's Competition Notices in August 2013.

Each of the questions asked by this consultation is set out in the template below. ***Note that an editable version of this response template is available on our website as an associated document to this consultation.*** *If you do not wish to use our response template, please ensure that you indicate the RMS and DSA to which your experiences relate.*

When considering your responses to these questions, please consider your experiences, the actions that UKPN has undertaken and the actions that you consider it could reasonably undertake.

Please check the RMS and DSAs that are relevant to you in the table below.

RMS	Eastern Power Networks plc (EPN)	London Power Network plc (LPN)	South Eastern Power Networks plc (SPN)
1. Metered high voltage work (HV)	☐	☐	☐
2. Metered HV and Extra High Voltage (EHV) work	☐	☐	☐
3. Metered EHV and above work	☐	☐	☐
4. Distributed Generation (DG) Low Voltage (LV) work	☐	☐	☐
5. Unmetered local authority (LA) work	☐	☐	☐
6. Unmetered Other	☐	☐	☐

When answering the questions below, please check the RMS(s) and DSA(s) that are relevant to your response.

Chapter Two

Question	RMS(s)	DSA(s)	Response
One: Are customers aware that competitive alternatives exist?	Metered HV ☐ Metered HV/EHV ☐ Metered EHV & above ☐ DG LV ☐ Unmetered (LA) ☐	EPN ☐ LPN ☐ SPN ☐	

Question	RMS(s)		DSA(s)		Response
	Unmetered (Other)	☐			
Two: Do customers have effective choice (ie are customers easily able to seek alternative quotations)?	Metered HV	☐	EPN	☐	
	Metered HV/EHV	☐	LPN	☐	
	Metered EHV & above	☐	SPN	☐	
	DG LV	☐			
	Unmetered (LA)	☐			
	Unmetered (Other)	☐			
Three: Does UKPN take appropriate measures to ensure that customers are aware of the competitive alternatives available to them?	Metered HV	☐	EPN	☐	
	Metered HV/EHV	☐	LPN	☐	
	Metered EHV & above	☐	SPN	☐	
	DG LV	☐			
	Unmetered (LA)	☐			
	Unmetered (Other)	☐			
Four: Are quotations provided by UKPN clear and transparent? Do they enable customers to make informed decisions whether to accept or reject a quote?	Metered HV	☐	EPN	☐	
	Metered HV/EHV	☐	LPN	☐	
	Metered EHV & above	☐	SPN	☐	
	DG LV	☐			

Question	RMS(s)		DSA(s)		Response
	Unmetered (LA) Unmetered (Other)	☐ ☐			
Five: Have customers benefitted from competition? Have they seen improvements in UKPN's price or service quality or have they been able to source a superior service or better price from UKPN's competitors?	Metered HV Metered HV/EHV Metered EHV & above DG LV Unmetered (LA) Unmetered (Other)	☐ ☐ ☐ ☐ ☐ ☐	EPN LPN SPN	☐ ☐ ☐	

Chapter Three

Question	RMS(S)		DSA(S)		Response
One: Does the level of competitive activity in the RMSs show that there is the potential for further competition to develop?	Metered HV Metered HV/EHV Metered EHV & above DG LV Unmetered (LA) Unmetered (Other)	☐ ☐ ☐ ☐ ☐ ☐	EPN LPN SPN	☐ ☐ ☐	

Question	RMS(S)	DSA(S)	Response
Two: Consider the organisational structure of UKPN's business and its procedures and processes – **(a)** how do they compare to those you encounter elsewhere in the gas and electricity markets or other industries? Do they reflect best practice? **(b)** do they enable competitors to compete with the timescales for connection (from quote to energisation) offered by UKPN? Or do they offer UKPN any inherent advantage over its competitors or prevent existing competitors from competing with them effectively? **(c)** do they assist, obstruct or delay connections providers entering the RMSs?	Metered HV ☐ Metered HV/EHV ☐ Metered EHV & above ☐ DG LV ☐ Unmetered (LA) ☐ Unmetered (Other) ☐	EPN ☐ LPN ☐ SPN ☐	

Question	RMS(S)	DSA(S)	Response
Three: Are the non-contestable charges levied by UKPN for statutory connections in the RMSs connections in the RMSs consistent with those levied for competitive quotations? Are they easily comparable with competitive quotations?	Metered HV ☐ Metered HV/EHV ☐ Metered EHV & above ☐ DG LV ☐ Unmetered (LA) ☐ Unmetered (Other) ☐	EPN ☐ LPN ☐ SPN ☐	
Four: What factors are key influences on development of competition in the RMSs? In particular, if you are an existing/potential competitor **(a)** what is the potential for you to enter new RMSs, or grow your share of an RMS you already operate in? **(b)** are there are any types of connection in any of the RMSs, or geographic locations in UKPN's DSAs, that by their nature, are not attractive to competition? Please explain your response.	Metered HV ☐ Metered HV/EHV ☐ Metered EHV & above ☐ DG LV ☐ Unmetered (LA) ☐ Unmetered (Other) ☐	EPN ☐ LPN ☐ SPN ☐	

Chapter Four

Question	RMS(S)		DSA(S)		Response
One: Do you agree with the methods used by UKPN to analyse the level of competition in each of the RMSs covered by its application? In particular, do you consider that UKPN gives a clear indication of the current level of competitive activity?	Metered HV Metered HV/EHV Metered EHV & above DG LV Unmetered (LA) Unmetered (Other)	☐ ☐ ☐ ☐ ☐ ☐	EPN LPN SPN	☐ ☐ ☐	
Two: Do you consider that competitive activity is at a level that in itself indicates that effective competition exists?	Metered HV Metered HV/EHV Metered EHV & above DG LV Unmetered (LA) Unmetered (Other)	☐ ☐ ☐ ☐ ☐ ☐	EPN LPN SPN	☐ ☐ ☐	

Chapter Six

Question	RMS(S)		DSA(S)		Response
One: Do you consider customers have an effective choice of connections provider? In particular, do you feel that levels of	Metered HV Metered HV/EHV Metered EHV &	☐ ☐ ☐	EPN LPN SPN	☐ ☐ ☐	

Question	RMS(S)	DSA(S)	Response
choice, value and service will be protected and will improve if the restriction on UKPN's ability to earn a margin is removed?	above DG LV ☐ Unmetered (LA) ☐ Unmetered (Other) ☐		
Two: Do you consider that there is scope for competitors to grow their market share (for example, if UKPN put up its prices or if its quality dropped), or are there factors constraining this?	Metered HV ☐ Metered HV/EHV ☐ Metered EHV & above ☐ DG LV ☐ Unmetered (LA) ☐ Unmetered (Other) ☐	EPN ☐ LPN ☐ SPN ☐	
Three: Do you consider that there is scope/appetite for new participants to enter the market? Do you consider that new entrants would be able to provide similar or better services than existing participants or are there factors constraining this?	Metered HV ☐ Metered HV/EHV ☐ Metered EHV & above ☐ DG LV ☐ Unmetered (LA) ☐ Unmetered (Other) ☐	EPN ☐ LPN ☐ SPN ☐	
Four: Given your overall view of UKPN, do you	Metered HV ☐	EPN ☐	

Question	RMS(S)	DSA(S)	Response
consider that we can have confidence in them to operate appropriately in the event that price regulation is lifted?	Metered HV/EHV ☐ Metered EHV & above ☐ DG LV ☐ Unmetered (LA) ☐ Unmetered (Other) ☐	LPN ☐ SPN ☐	
Five: Do you consider that there are factors not addressed in this consultation that should be taken into consideration in determining whether price regulation should be lifted?	Metered HV ☐ Metered HV/EHV ☐ Metered EHV & above ☐ DG LV ☐ Unmetered (LA) ☐ Unmetered (Other) ☐	EPN ☐ LPN ☐ SPN ☐	

Appendix 2 - Background

Chapter Summary

This chapter provides some background to our decision to introduce regulated margins and the potential for DNOs to have price regulation lifted where they meet both a Legal Requirements Test and a Competition Test.

Competition in Connections

Overview of competition in connections

1.8. Many of the activities of electricity network companies have the characteristics of a natural monopoly and are regulated by Ofgem. Some network activities are not natural monopolies such as the construction of new assets required to extend the network or connect to the existing network. Independent Connections Providers (ICPs) compete with network operators to construct connections (including constructing any network extension required for new developments), but only licensed companies can own and operate the assets once they have been installed.

1.9. Where effective competition is possible, it can be a much better way to protect consumers' interests than regulation. This is because it provides customers with choice and competition between service providers is likely to be more effective than regulation at promoting lower prices, innovation and better service standards. We have sought to promote competition in both the installation of connections to gas and electricity distribution networks, and in the subsequent ownership and operation of those assets.

Role of the host distributor in supporting competition

1.10. Each DNO sets out in its charging methodology the scope of connection services that ICPs are permitted to compete with the incumbent to provide. Activities that ICPs can carry out are described as 'contestable' and those that can only be carried out by the host distributor (DNO) are referred to as 'non-contestable'. Some services may be considered non-contestable by the DNO due to technical or safety reasons. Other services may be considered non-contestable where current legislative or regulatory arrangements make it difficult for competition to develop.

1.11. Current examples of contestable works include construction of assets and jointing of dead cables. Examples of non-contestable works include determination of Point of Connection (POC) and design approval. Ofgem is currently working with industry to extend contestability. Further details can be found in Chapter 3 of this document.

1.12. Since ICPs rely on the DNO to provide non-contestable services it is important for competition in connections that the incumbent does not abuse its position as the monopoly provider of these services. The Competition Act and the Electricity Distribution Licence include measures to prohibit the incumbents from discriminating unduly against competitors in the provision of non-contestable services.

Growth of competition in connections

1.13. Since the introduction of competition[11] we have seen competition grow rapidly in gas connections, to the extent that more than half of all connections are now installed by new entrants. Competition in the electricity connections market has developed much less rapidly.

1.14. In the metered electricity connections market (across all DNOs), market penetration by new entrants[12] stood at only 13 per cent in 2009-10. Although this was a marginal increase in new entrants' market share since 2008-09, the overall level remained low and the rate of growth remained slow. In the unmetered market (across all DNOs), market penetration by new entrants rose to nine per cent in 2009-10, compared to less than two per cent in 2008-09.[13]

DPCR5 Final Proposals – Introduction of regulated margins and the potential for Ofgem to lift price regulation

1.15. The 2008-09 and 2009-10 Connections Industry Reviews highlighted concerns about the development of competition in the electricity connections market. We set out to address these concerns as part of the last price control review (DPCR5), which came into effect in April 2010, by introducing a new approach to facilitating competition in connections to electricity distribution networks. Developments were inserted into the Electricity Distribution Licences of the various DNOs as Charge Restriction Condition 12 (CRC 12).[14]

1.16. We recognised that there are some market segments where competition may not currently be viable, for example the provision of one-off Low Voltage (LV) connections. These market segments are described as Excluded Market Segments for the purposes of CRC 12 and they are set out at Appendix 3 of this document. One factor that may make jobs in these market segments unattractive to ICPs is their general low value. In these market segments where competition is not currently considered viable, DNOs are not allowed to earn a margin on any of the connections services they provide.

1.17. The arrangements introduced at DPCR5 have however enabled DNOs to earn a regulated margin (set at four per cent above cost)[15] on contestable connection services in those market segments where competition is considered viable. These market segments are described as Relevant Market Segments (RMSs) in CRC 12 and are set out in Appendix 3 of this document. They include metered demand and generation connections at all voltages but exclude certain metered demand connections (one off industrial and commercial work at low voltage and domestic LV work relating to no more than four domestic premises) where competition is not considered currently viable. They also include

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[11] Competition was introduced in gas connections in 1998 and electricity connections in 2000.
[12] ICPs and Independent Distribution Network Operators (IDNOs).
[13] Note that market penetration by new entrants (metered connections) rose to 23 per cent in 2010-11.
[14] Charge Restriction Condition 12 - http://epr.ofgem.gov.uk/index.php?pk=folder575248
[15] Previously under DNO approved connection charging methodologies their connection charge were limited to recovery of reasonable costs.

unmetered connections activities. The purpose of the regulated margin is to create headroom to encourage new entrants and to remove the stifling impact on competition that may have existed when the DNOs were not allowed to earn a margin over their costs on contestable services.

1.18. In addition to this regulated margin, we also made provision for DNOs to apply to have price regulation lifted in market segments where competition can be relied upon to protect customer interests.

1.19. The Competition Test is designed to enable DNOs to demonstrate that effective competition exists in each RMS. The key overall consideration in our assessment is whether competition can be relied upon to protect the interests of customers. By this we mean that competition will deliver good levels of service and innovation in the connections market at prices which represent value for customers. We would expect that service, innovation and value should reflect customers' experience in similar competitive markets such as the provision of other utility services/infrastructure. Further, we would expect that competition would deliver improvements in these areas over time, again to an extent that should be comparable with similar industries. For effective competition to exist, customers must have a real choice between alternative connections providers and/or, if the existing market participants do not deliver, there must be a credible threat of new providers entering the market.

1.20. If customers are to be able to choose between alternative connections providers, UKPN, as the owner of the local distribution network, and provider of non-competitive connections services,[16] has an important role to play. If actual and potential alternative providers are going to be able to put genuine competitive pressure on UKPN then they will need to be able to receive timely and reliable non-contestable connections services. Further, for competition to work effectively the alternative providers must not be significantly disadvantaged in comparison with UKPN's own connection business. In considering whether an alternative provider is at a disadvantage to UKPN, we note that it is irrelevant whether any disadvantage is due to the actions of UKPN or an inherent feature of the connections market (for example, limited access to UKPN's network for safety reasons).

1.21. To further encourage DNOs to facilitate competition we also set out that any DNO that failed to demonstrate competition, by December 2013, would be reviewed by Ofgem and could subsequently be referred to the Competition Commission.

1.22. In DPCR5 Final Proposals we set out the information that DNOs should provide in making their evidence case. These issues form the structure of UKPN's Competition Notices. They are:

- actual and potential competition (the current level of competition the DNO faces in each market segment and the scope for this competition to grow);

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[16] Some aspects of the connection activity are deemed non-contestable and a can (currently) only be provided by the owner of the distribution network to which a connection is being made.

- price and transparency of pricing to customers (the steps the DNO takes to ensure that customers have the information they need to make decisions between taking a service from the DNO or a new entrant provider, and what they are doing to ensure they do not discriminate between their own customers and new entrant providers when they price their services);

- promoting awareness of competitive alternatives amongst connections customers (the steps the DNO takes to ensure that customers are aware that they can go to other providers for the service they are requesting);

- competition in connections procedures and processes (the actions the DNO has taken to ensure that the procedures and processes they have in place for non-contestable services meet the needs of new entrants and are provided in a non-discriminatory manner);

- efforts to open up non-contestable activities to competition (what action the DNO has taken to extend contestability); and

- barriers to competition (other actions the DNO is taking to remove barriers to new entrants competing in their area).

Appendix 3 – The Legal Requirements and Competition Test

1.23. Both the Legal Requirements Test and the Competition Test are set out in DPCR5 Final Proposals and referenced in CRC 12. Both Tests are reproduced below.

1.24. The overriding objective of the Competition Test is to enable DNOs to demonstrate that the market is working effectively for their customers. The DNO's evidence should enable Ofgem to take a holistic view of the effectiveness of the market and prescribe an appropriate course of action (ie allow regulated or unregulated margins, or further work to remove barriers). Accepting that all markets are different, there will be a flexible approach to the format and scope of the DNO's evidence case subject to the legal requirements being met.

The Legal Requirements Test

1.25. Compliance with the Legal Requirements Test is essential for passing the Competition Test. The legal requirements are for the DNO to have no enforced breaches in the given regulatory year of:

- standard licence condition 12.6(c): Requirement to offer terms for use of system and connection;
- amended standard licence condition 15: Standards for the provision of Non-Contestable Connections Services;
- new standard licence condition 15A: Connections policy and connection performance;
- standard licence condition 19: Prohibition of discrimination under Chapters 4 and 5; and
- the Competition Act 1998.

The Competition Test

1.26. Overall, we will be looking to see whether we can rely on real competition or the threat of competition to protect consumer interests rather than regulation of the margin earned by the DNO. There are a number of key issues that DNOs should consider in making their evidence case. This is not intended to be an exhaustive list of requirements but provides guidance on aspects of the market that we will look at:

- barriers to competition (including parts of the market where competition is not feasible and the reasons why);

- actual and potential competition (this is intended to capture views on levels of competitive activity);
- price and transparency of pricing to customers;
- promoting awareness of competitive alternatives amongst connection customers;
- competition in connections procedures and processes; and
- efforts to open up non-contestable activities to competition.

Appendix 4 – The Relevant Market Segments

1.27. This section reproduces all of the Relevant Market Segments (RMSs) set out in CRC 12 of the Electricity Distribution Licence.

1.28. Metered Demand Connections

- **Low Voltage (LV) Work** (LV connection activities involving only LV work, other than in respect of the Excluded Market Segments (see paragraph 1.31 below).)
- **High Voltage (HV) Work** (LV or HV connection activities involving HV work (including where that work is required in respect of connection activities within an Excluded Market Segment)).
- **HV and Extra High Voltage (EHV) Work** (LV or HV connection activities involving EHV work.)
- **EHV work and above** (EHV and 132kV connection activities.)

1.29. Metered Distributed Generation (DG)

- **LV work** (LV connection activities involving only LV work.)
- **HV and EHV work** (Any connection activities involving work at HV or above.)

1.30. Unmetered Connections

- **Local Authority (LA) work** (New connection activities in respect of LA premises.)
- **Private finance initiatives (PFI) Work** (New connection activities under PFIs.)
- **Other work** (All other non-LA and non-PFI unmetered connections work.)

1.31. The Excluded Market Segments are as follows:

- LV connection activities relating to no more than four domestic premises or one-off industrial and commercial work; and
- connection activities in respect of a connection involving three-phase whole current metering at premises other than Domestic Premises.

Appendix 5 - Glossary

C

Competition Test

The Competition Test is set out in Distribution Price Control Review 5 Final Proposals - Incentives and Obligations and referenced in CRC 12. It is also recreated at Appendix 3 to this document.

CIR — Connections Industry Review

An annual Ofgem publication that sets out how the gas and electricity connections market has developed in the given year. It also details how licensed companies have complied with their connections related obligations and standards.

CRC — Charge Restriction Condition

A special condition of the Electricity Distribution Licence.

D

DG — Distributed Generation

Distributed generation is also known as embedded or dispersed generation. It is an electricity generating plant connected to a distribution network rather than the transmission network. There are many types and sizes of distributed generation facilities. These include Combined Heat and Power (CHP), wind farms, hydro electric power or one of the new smaller generation technologies.

DNO — Distribution Network Operator

There are 14 Electricity Distribution Network Operators that carry electricity from the transmission system and some distributed generators to industrial, commercial and domestic end users. They have distribution services areas which correspond to those of the former public electricity suppliers (before privatisation in 1990). They are owned by six different corporate groups.

DPCR — Distribution Price Control Review

The price review applicable to electricity distribution network operators. The fifth Distribution Price Control Review (DPCR5) was launched in April 2010.

DSA — Distribution Services Area

Electricity DNOs each have a distribution services area. With the exception of embedded independent networks they are monopoly operators within that area and are subject to particular licence requirements accordingly.

E

ECSG — Electricity Connections Steering Group

Advises Ofgem on the measures that are required to support the development of competition in the electricity connections market.

EHV — Extra High Voltage

Over 22 kV but less than or equal to 72 kV.

EMS — Excluded Market Segments

As set out in CRC 12. In DPCR5 Final Proposals Ofgem considered that that competition was not viable in these market segments at that time or in the foreseeable future. DNOs are not able to earn a regulated margin in these market segments.

HV — High Voltage

Exceeds 1 kV but does not exceed 22 kV.

I

ICP — Independent Connections Provider

An independent connections provider not affiliated to a distribution network operator.

IDNO — Independent Distribution Network Operator

The Authority has issued six distribution licensees to IDNOs. IDNOs own and operate various small networks embedded within DNO networks. IDNOs do not have DSAs.

L

Legal Requirements Test

The Legal Requirements Test is set out in Distribution Price Control 5 Final Proposals - Incentives and Obligations and referenced in CRC 12. It is also recreated at Appendix 3 to this document.

LV — Low Voltage

Does not exceed one kV

P

POC Point of Connection

The point at which new works are connected to the existing distribution network.

R

Regulatory Year

From 1 April to 31 March.

RMS Relevant Market Segment

As set out in CRC 12, in DPCR5 Final Proposals Ofgem considered that that competition is viable in these market segments. DNOs currently charge a four per cent margin on contestable services provided in these market segments.

S

SLC Standard Licence Condition

A Condition of the Electricity Distribution licence.

W

UKPN UK Power Networks

A collective name for the three licensed distribution network operators to whom this consultation relates – Eastern Power Networks plc, London Power Networks plc, South Eastern Power Networks plc.

Appendix 6 - Feedback Questionnaire

1.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

1.2. Please send your comments to:

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