

# 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’ (UKPNs) three Distribution Service Areas (DSAs). It follows the submission to us by UKPN of ‘Competition Notices’<sup>1</sup> on 23 December 2013 on behalf of Eastern Power Networks plc (EPN), London Power Networks plc (LPN) and South Eastern Power Networks plc (SPN) in relation to two Relevant Market Segments (RMSs) and one alternative market segment.

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 regulation 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.<sup>2</sup> We intend to make determinations on whether to accept UKPN’s proposed alternative market segments, and on whether UKPN has satisfied these tests in each of its DSAs.

In this document we highlight the information we are looking for to help us make our determinations. UKPN’s Competition Notices are available on our website as an associated document to this consultation.

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<sup>1</sup> A Competition Notice is a Notice given by the licensee in accordance with Part D of Charge Restriction Condition (CRC) 12.

<sup>2</sup> CRC 12. Licensee’s Connection Activities: Margins and the development of competition

## Context

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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 competition in the connections 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 other limitations 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 nine applications – Electricity North West Limited (on 21 November 2011, 10 May 2013 and 23 August 2013), Northern Powergrid (on 26 October 2012), UK Power Networks (on 29 October 2012 and 15 August 2013), Western Power Distribution (on 25 February 2013), Scottish and Southern Energy Power Distribution (on 29 April 2013) and Scottish Power Energy Networks (on 13 December 2013). Details of our previous determinations and of any Competition Notices we are currently considering can be found on our website.<sup>3</sup>


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 received an application from UK Power Networks (UKPN) on behalf of its three Distribution Service Areas (DSAs): Eastern Power Networks plc (EPN), London Power Networks plc (LPN) and South Eastern Power Networks plc (SPN). This consultation seeks views on UKPN’s application, which relates to -

- the Unmetered connections – Other work RMS in its three Distribution Service Areas (DSAs)
- the Unmetered connections – Local Authority work RMS in the London Power Networks plc (LPN) DSA, and

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<sup>3</sup> <https://www.ofgem.gov.uk/electricity/distribution-networks/connections-and-competition>



## Competition in connections – Consultation on UKPN’s Competition Notice

- Metered Demand HVHV (High voltage connection activities involving only high voltage work) work. This is an alternative market segment that UKPN has proposed as part of its application in its three DSAs.

This is UKPN’s third application. Our determinations in this case will be based on the evidence presented in its Competition Notices and responses to this consultation.

## Associated documents

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UKPN’s Competition Notices and decisions on previous Competition Notices

<https://www.ofgem.gov.uk/electricity/distribution-networks/connections-and-competition/competition-connections>

DPCR5 Final Proposals - Incentives and Obligations

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=348&refer=Networks/ElecDist/PriceCtrls/DPCR5>

Special conditions of the Electricity Distribution Licence

<http://www.ofgem.gov.uk/Networks/ElecDist/PriceCtrls/DPCR5/Documents1/CRCs%20master%20merged.pdf>

# Contents

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<b>Executive Summary</b>	<b>7</b>
Background	7
Considerations in determining whether to accept an alternative market segment	8
Considerations in determining whether to lift price regulation	8
Respondents’ views	9
<b>1. UKPN’s Competition Notices</b>	<b>10</b>
Consultation responses	12
<b>2. Alternative market segments</b>	<b>14</b>
UKPN’s proposed alternative market segments	14
Our understanding of the proposed alternative market segments	15
UKPN’s reasons for proposing alternative market segments	16
Questions for stakeholders’ on UKPN’s proposed segmentation	18
<b>3. Customers’ awareness of and ability to choose competitive alternatives</b>	<b>19</b>
Number of competitive alternatives	20
Transparency of pricing and giving customers the ability to choose	21
Benefits	22
<b>4. The potential for further competition</b>	<b>23</b>
Ease of entering and competing in the market	24
The number of competitors active in the market	24
Barriers to effective competition	24
<i>Availability of guidance and information for ICPs/IDNOs</i>	25
<i>Service and response times</i>	25
<i>Contractual arrangements for the adoption of assets built by ICPs</i>	26
<i>Inspection and monitoring of assets built by ICPs</i>	26
<i>Arrangements for obtaining land rights</i>	27
<i>Consistency of charges</i>	27
<i>Other potential barriers</i>	27
The future growth of competition	28
The potential for competition to develop	28
Efforts to open up non-contestable activities to competition	28
<b>5. UKPN’s assessment of existing competitive activity</b>	<b>31</b>
<b>6. UKPN’s compliance with the legal requirements test</b>	<b>34</b>
The Legal Requirements Test	34
<b>7. Summary</b>	<b>36</b>
<b>Appendices</b>	<b>39</b>

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## Executive Summary

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We have received an application from UKPN for price regulation to be lifted for certain connection services in its three licensed Distribution Service Areas (DSAs): Eastern Power Networks plc (EPN), London Power Networks plc (LPN) and South Eastern Power Networks plc (SPN).

We are seeking views and evidence by 20 March 2014 on whether we can have confidence in UKPN being constrained by pressures from actual or potential competitors if price regulation is lifted.

We have four months from the date UKPN submitted its application, 23 December 2013, to determine whether to lift price regulation.

### 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 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 DPCR5 (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.<sup>4</sup> 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.

UKPN is applying for price regulation to be lifted in the following market segments -

- the Unmetered connections – Other work RMS in its three Distribution Service Areas (DSAs)
- the Unmetered connections – Local Authority work RMS in the London Power Networks plc (LPN) DSA, and

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<sup>4</sup> 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.

- Metered Demand HVHV (High voltage connection activities involving only high voltage work) work in its three DSAs. This is an alternative market segment.

## **Considerations in determining whether to accept an alternative market segment**

CRC12 requires a Competition notice submitted with proposed alternative market segments to -

- define the alternative segments to which the Notice relates
- set out the licensee’s reasons for specifying those alternative segments, and
- be accompanied by sufficient evidence.

In assessing alternative market segments we will consider the extent to which the applicant DNO has fulfilled these requirements. This includes -

- Whether the DNO has clearly defined the alternative market segments. In considering this, we will assess whether there is any ambiguity in the type of connection work which might be categorised under the proposed alternative market segments.
- Whether the reasons for specifying the alternative segment are clearly explained? In considering this, we will assess whether the alternative market segments have been made on the basis of distinct customer characteristics and/or type of work and/or ability/willingness of competitors to bid for this type of work.
- Whether the DNO has provided evidence to substantiate its reasons for proposing the alternative segments instead of the existing relevant market segments?
- Whether customers or competitors recognise the proposed alternatives as distinct portions of the connections market and an appropriate way of segmenting the market for the assessment of effective competition.

This consideration will be informed both by evidence provided by the DNO, responses to this consultation and our own knowledge.

## **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 DSAs covered by UKPN’s application.

One important indicator of whether competition is effective is UKPN’s share of work carried out. Another is the number of alternative providers active in each market segment. While we will take into account UKPN’s share of work in each DSA in assessing whether effective competition exists, in our view it should not 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 which looks narrowly at market shares and retains price regulation until predefined thresholds have been met may not be in customers’ best interests. Where 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**

We seek views on the definition of the alternative market segments put forward by UKPN. We would like to understand whether stakeholders consider those definitions to be clear and whether the reasons for proposing them are well founded.

For the reasons outlined above, we will consider a range of criteria in assessing UKPN’s application. We will make our decision having considered the evidence in UKPN’s Competition Notices and in responses to this consultation provided by interested parties.

We would like to hear in particular from parties who purchase contestable connection services in the market segments covered by UKPN’s application in one or more of its three 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 market segments 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

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## 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. On 23 December 2013 UKPN submitted Competition Notices<sup>5</sup> in respect of its three licensed distribution networks -

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

1.2. Appendix 1 of CRC 12 of the Electricity Distribution Licence<sup>6</sup> lists and defines each of the nine RMSs in relation to which UKPN may submit Competition Notices. Paragraph A1.5 of Appendix 1 of CRC 12 allows DNOs to propose alternative market segments and apply for price regulation to be lifted in such segments.

1.3. UKPN’s Competition Notices serve as applications to have price regulation lifted on competitive connection activities in the following market segments -

- Unmetered Other RMS as set out in CRC 12 of the Electricity Distribution Licence<sup>7</sup> in all three DSAs
- Unmetered Local Authority RMS as set out in CRC 12 of the Electricity Distribution Licence in the LPN DSA, and
- Alternative Metered Demand HVHV market segment as defined by UKPN in its application in all three DSAs.

1.4. CRC 12 and our DPCR5 Final Proposals set out the process we must follow in assessing the Competition Notices submitted by UKPN.

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<sup>5</sup> 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 its licensed areas. We will make separate determinations for each licensee.

<sup>6</sup> Appendix 4 sets out the details of all nine RMSs.

<sup>7</sup> Appendix 4 sets out the details of all nine RMSs.

1.5. In respect of RMSs that are defined in Appendix 1 of CRC 12 we must determine whether the Legal Requirements Test and the Competition Test (set out in CRC 12) have been met in each of UKPN’s DSAs.<sup>8</sup>

1.6. In respect of the alternative market segment proposed by UKPN, we must first determine whether to accept or reject the alternative segment.

- If we accept the alternative segment, we must then determine whether the Legal Requirements Test and the Competition Test have been met for that alternative segment in each of UKPN’s DSAs.
- If we reject the alternative segment, we will not consider UKPN’s application to have price regulation lifted in respect of that segment.

1.7. 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.

1.8. 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 DPCR5 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

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<sup>8</sup> The Legal Requirement Test and the Competition Test are set out in Appendix 3.

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

### **Consultation responses**

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

1.10. We are required to make separate determinations for each of the DSAs covered by UKPN’s application.

1.11. 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 UKPN’s DSAs each section of their response relates.

1.12. 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.

1.13. 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 20 March 2014. We consider that this gives stakeholders sufficient time to consider documents and prepare responses.

### **Structure of this document**

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

- All stakeholders to consider the alternative market segment proposed by UKPN discussed in Chapter 2.
- Customers to consider the issues discussed in Chapter 3 (Customers’ awareness of and ability to choose competitive alternatives) and the document summary at Chapter 7.
- Existing and potential competitors to consider the issues discussed in Chapter 4 (The potential for further competition) and the document summary at Chapter 7.

1.15. Chapter 5 presents a summary of UKPN’s assessment of competitive activity and we seek views on the data provided in UKPN’s Competition Notices.

1.16. Chapter 6 describes UKPN’s current position against the Legal Requirements Test.

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

1.18. 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.

1.19. Appendix 3 outlines the Legal Requirements and Competition Test

1.20. Appendix 4 defines each of the nine RMSs.

1.21. Appendix 5 contains a glossary.

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

1.23. We encourage all interested parties to read the documents containing UKPN’s Competition Notices which is available on our website as associated documents to this consultation.

1.24. We intend to publish our decision on the Competition Notices submitted by UKPN with details of our determinations in respect of each of its DSAs in April 2014.

## 2. Alternative market segments

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### Chapter Summary

This chapter seeks views on UKPN’s application to consider its proposition for two alternative market segments.

**Question 1:** Do you, as a customer or competitor, view these proposed alternatives as distinct segments within the connections market? Are they an appropriate way of segmenting the market for the assessment of effective competition?

**Question 2:** Do you consider UKPN’s definition of the proposed alternative market segments to be clear and unambiguous?

**Question 3:** Please provide details of the types of connection activity which it would be difficult to categorise under the proposed alternative market segments.

**Question 4:** Are there other factors that we should take into account in deciding whether to accept or reject UKPN’s proposed definitions of the alternative market segments?

2.1. CRC 12 allows DNOs to propose alternative market segments to those defined in the licence at CRC12 A1.2 to A1.4. UKPN has made such an application. UKPN’s application relates to one alternative market segments and two RMSs as defined in CRC 12.

2.2. We are required by CRC 12 to decide whether to accept or reject the alternative market segments proposed by UKPN, before considering its application to have price regulation lifted in one of those segments. This chapter describes the proposed alternative market segments and sets out UKPN’s stated reasons for proposing this segment. We invite views on UKPN’s proposed alternative market segments.

### UKPN’s proposed alternative market segments

2.3. UKPN’s application proposes to create two alternative market segments which are subsets of the Metered Demand HV RMS as defined in CRC 12.

2.4. CRC 12 defines the Metered Demand HV RMS as follows -

- In respect of Metered premises owned or occupied by Demand Customers, low voltage or high voltage Connection Activities involving high voltage work (including where that work is required in respect of Connection Activities within an Excluded Market Segment).

2.5. UKPN’s application splits the Metered Demand HV RMS into two alternative markets segments -

- **Metered Demand LVHV:** In respect of Metered premises owned or occupied by Demand Customers, low voltage Connection Activities involving high voltage work

(including where that work is required in respect of Connection Activities within an Excluded Market Segment).

- **Metered Demand HVHV:** In respect of Metered premises owned or occupied by Demand Customers, High voltage Connection Activities involving only high voltage work (including where that work is required in respect of Connection Activities within an Excluded Market Segment).

2.6. UKPN’s application also states that “where the application is for an IDNO connection and we are providing the point of connection at HV, and the network boundary between our network and the IDNO’s network is also at HV then, provided there is no EHV work required, the scheme will be treated as HVHV regardless of whether the IDNO has LV assets/customers or not.”

2.7. UKPN subsequently informed us that where the application is for an ICP connection that involves LV and HV work, and the point of connection to the existing UKPN network is at LV or HV, this would be placed within the Demand LVHV alternative market segment.

2.8. UKPN has submitted Competition Notices for the Metered Demand HVHV alternative market segment, and not the Metered Demand LVHV alternative market segment.

### **Our understanding of the proposed alternative market segments**

2.9. For the purposes of our assessment of UKPN’s application it is important that proposed alternative market segments are clearly and unambiguously defined, and that stakeholders have clarity about the treatment of different types of connection projects that currently fall within the scope of the undivided Metered Demand HV RMS.

2.10. Using a few examples of connections projects, the following table sets out our understanding of UKPN’s proposed market segmentation. The table draws on information provided to us by UKPN after the submission of its Notices.

**Table 1: Categorisation of example connection projects**

Example connection projects	Categorisation under the CRC 12 RMS definition	Categorisation under UKPN’s alternative segmentation
<p>Housing development involving LV and HV work to connect to the UKPN HV network.</p> <p>UKPN carries out all the work. The point of connection to the existing UKPN network is at LV or HV (typically HV).</p>	Metered Demand HV RMS	<p>Metered Demand LVHV market segment</p> <p><b>Not applied for</b></p>
<p>Housing development involving LV and HV work to connect to the UKPN network.</p> <p>All LV and some or all of the HV work is carried out by an ICP. The point of connection to the existing UKPN network is at LV or HV (typically HV).</p>	Metered Demand HV RMS	<p>Metered Demand LVHV market segment</p> <p><b>Not applied for</b></p>
<p>Housing development involving LV and HV work to connect to the UKPN HV network.</p> <p>All LV and some or all of the HV work is carried out by an IDNO. The point of connection and boundary with the UKPN network is at HV.</p>	Metered Demand HV RMS	<p>Metered Demand HVHV market segment</p> <p><b>Applied for</b></p>
<p>Commercial HV Demand end user involving only HV work to connect to the UKPN HV network.</p> <p>UKPN carries out all the work. The point of connection to the existing UKPN network is at HV.</p>	Metered Demand HV RMS	<p>Metered Demand HVHV market segment</p> <p><b>Applied for</b></p>
<p>Commercial HV Demand end user involving only HV work to connect to the UKPN HV network.</p> <p>ICP carries out some HV work. The point of connection with the existing UKPN network is at HV.</p>	Metered Demand HV RMS	<p>Metered Demand HVHV market segment</p> <p><b>Applied for</b></p>
<p>Commercial HV Demand end user involving only HV work to connect to the UKPN HV network.</p> <p>IDNO carries out some HV work. The point of connection and boundary with the UKPN network is at HV.</p>	Metered Demand HV RMS	<p>Metered Demand HVHV market segment</p> <p><b>Applied for</b></p>

### **UKPN’s reasons for proposing alternative market segments**

2.11. UKPN’s application sets out its reasons for dividing the Demand HV RMS into two alternative market segments.

2.12. According to UKPN, there is a “significant variance between the size of scheme typically won by competitors and those carried out by UK Power Networks” within the Metered Demand HV RMS. We note that, based on the data provided in the Competition Notices, the average size of projects completed by UKPN (by MVA) is much smaller than the average size of projects completed by ICPs or IDNOs, particularly in the EPN and SPN areas.

2.13. According to UKPN, there are important differences between the type of work covered by the two alternative market segments.

2.14. The Demand HVHV segment is “characterised by relatively low volumes and a relatively high electrical load per connection. It is less likely to be feasible to make a connection to passing HV mains, resulting in long cable lengths, such as to lay a new feeder from a primary substation. The installation of privately owned transformers and LV cabling is work available for competitors to undertake, representing a package of work that would be cost effective and therefore attractive to a competitor and their customer. With a higher value per project than low voltage connections involving high voltage work and a lower level of complexity relative to EHV work, this segment is potentially the most attractive to competitors.”

2.15. The Demand LVHV segment is “characterised by mid-range volumes and a wide variability in value per connection. Although generally of a higher value per project than low voltage work and a lower level of complexity relative to EHV work, this segment is relatively less attractive to competitors than the ‘HVHV’ Alternative Relevant Market Segment.”

### **Our consideration of proposed alternative market segments**

2.16. CRC12 requires a Competition notice submitted with proposed alternative market segments to:

- (a) define the alternative segments to which the Notice relates;
- (b) set out the licensee’s reasons for specifying those alternative segments; and
- (c) be accompanied by such evidence as, in the opinion of the licensee, is sufficient to substantiate its reasons for specifying those alternative market segments.

2.17. In assessing alternative market segments we will consider the extent to which the applicant DNO has fulfilled these requirements. We will consider —

- a) Whether or not the DNO’s Notice has clearly defined the alternate segment. We will assess whether there is any ambiguity in the type of connection work which might be categorised under the proposed alternative market segments.



- b) Are the reasons for specifying the alternative segment clearly explained? We will assess whether the alternative market segments have been made on the basis of distinct customer characteristics and/or type of work and/or ability/willingness of competitors to bid for this type of work.
- c) Whether the DNO has provided evidence which substantiates its reasons for proposing the alternative segments instead of the existing relevant market segments.

2.18. This consideration will be informed both by our own analysis of evidence provided by the DNO and responses to this consultation.

### **Questions for stakeholders’ on UKPN’s proposed segmentation**

2.19. We would like to hear the views of customers and potential or actual competitors on UKPN’s proposed definitions of the alternative market segments.

2.20. In particular, we invite stakeholders’ responses to the following questions:

- Do you, as a customer or competitor, view these proposed alternatives as distinct segments within the connections market? Are they an appropriate way of segmenting the market for the assessment of effective competition?
- Do you consider that UKPN’s definitions of its proposed alternative segments are clear and unambiguous?
- Please provide details of any connection activity which would be difficult to categorise under the proposed alternative segments.
- Are there other factors that we should take into account in deciding whether to accept or reject UKPN’s proposed alternative market segments?

## 3. Customers’ awareness of and ability to choose competitive alternatives

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### 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.**

**In your response please indicate the DSA(s) to which your experiences relate.<sup>9</sup>**

**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 superior service or better price from UKPN’s competitors?

3.1. 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 market segments, 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.

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<sup>9</sup> Wherever possible please provide your response using the template at appendix 1 of this document.

### Number of competitive alternatives

3.2. UKPN reports in its Competition Notices the number of active competitors in each market segment and for each DSA in the twelve months to October 2013 -

- For the metered demand HVHV market segment, UKPN reports the number of parties requesting Point of Connection (POC) quotes.
- For the two unmetered segments, UKPN reports the number of competitors that have been appointed by customers to carry out contestable works.

3.3. Table 2 sets out the relevant information.

**Table 2: Number of active competitors, 12 months to October 2013**

Relevant Market Segment	EPN	LPN	SPN
<b>Number of competitors that have requested Point of Connection quotes</b>			
Demand HVHV	22	18	17
<b>Number of competitors appointed by customers</b>			
Unmetered Local Authority	N/A	5	N/A
Unmetered Other	4	4	4

Source: UKPN Competition Notice December 2013

3.4. In addition to the above, UKPN states that -

- In relation to the Unmetered Local Authority RMS, 11 competitors in the LPN area have signed agreements with UKPN that would allow them to carry out live jointing to LV service cables. Eight of these competitors also have agreements that would allow them to carry out live jointing to LV underground mains.
- In relation to the Unmetered Other RMS, 11 competitors each in the EPN, LPN and SPN areas have signed agreements with UKPN that would allow them to carry out live jointing to LV service cables. Of these, nine competitors each in the EPN and SPN areas, and eight competitors in the LPN area also have agreements that would allow them to carry out live jointing to LV underground mains.

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

3.6. We would like to understand if this is the experience of customers in these DSAs. Have customers 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**

3.7. 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. The website contains information and guidance for customers on the type of work which may be contestable, and an overview of the process if they were to choose an alternative provider. It also provides a list of ICPs operating in the UKPN area.
- UKPN has produced 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 automatically sent to those customers that request a connections application form from UKPN. The factsheet is also enclosed with every “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.

3.8. 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 out of 17 respondents agreed “to a great extent or completely” that competitive alternatives are available to them when appointing a connection provider. 50 per cent had signed an “Asset Owner Agreement”, which enables them to use any UKPN approved ICP to carry out unmetered connections activities. Of those who had signed the agreement, 78 per cent had appointed an ICP.
- UKPN reports the results of surveys with one-off customers and with repeat customers that were carried out in June 2012 and November 2011 respectively. These surveys report that 6 out of 7 one-off customers who responded, and 8 out of 10 repeat customers who responded, were aware that competitive alternatives to UKPN were available.

3.9. We seek stakeholders’ views on the points made by UKPN. In particular, we are interested in whether stakeholders 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**

3.10. 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.

3.11. Since June 2012, all UKPN quotes have included a breakdown of non-contestable charges. UKPN states that this level of detail has led to “significantly improved customer understanding of what work had been included in the Connection Offer”. Since June 2013, a similar breakdown is also provided for “Contestable and Dual Funded elements of all Connection Offers in addition to the non-contestable works”. UKPN states that the detailed contestable cost information enables its customers to make better informed decisions, and helps competitors offer quotations on a like-for-like basis.

3.12. 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 (POC) quote.

3.13. According to UKPN’s connection charging methodology statement, the “validity period of a Connection Offer [an all works offer] or POC Offer is normally 90 calendar days unless after the issue of the Connection Offer or POC Offer the validity period is subsequently reduced as a result of the application becoming interactive.”<sup>10</sup> 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.

3.14. UKPN states that in October 2012 it developed “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 started a pilot for convertible quotes for Demand HV in the SPN area in November 2012 and extended this to “specific geographic locations within our LPN and EPN areas”. The Notices state that feedback from users of these quotes was not positive and that UKPN has delayed the wider introduction of convertible quotes until the “second half of 2014 and to incorporate the further development of this into our Business Transformation Programme”.

3.15. 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?

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<sup>10</sup> UK Power Networks, “Statement Of Methodology And Charges for Connection to the electricity distribution systems of Eastern Power Networks Plc, London Power Networks Plc & South Eastern Power Networks Plc” (January 2014).

- Does the 90-day validity period on UKPN quotes allow customers to consider competitive alternatives?
- Will the delay in the roll out of “convertible quotes” affect customers’ ability to consider competitive alternatives?

**Benefits**

3.16. 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.

## 4. The potential for further competition

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### Chapter Summary

This chapter seeks views of existing and potential competitors on the potential for future competitive activity in each market segment and DSA covered by UKPN’s Competition Notices. 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 the market segments.

### 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.**

**In your response please indicate the DSA(s) to which your experiences relate.<sup>11</sup>**

**Question 1:** Does the level of competitive activity in the market segments 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 market segment?

**Question 3:** Are the non-contestable charges levied by UKPN for statutory connections in the market segments consistent with those levied for competitive quotations? Are they easily comparable with competitive quotations? Do the differences in charges between a POC quote and the non-contestable elements of a full works quote act as a barrier to competition?

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

- ➔ what is the potential for competitors to enter the market segments, or grow their share of the market segments if they already operate in it?
- ➔ are there any types of connection in the market segments, or geographic locations in UKPN’s DSAs, that by their nature, are not attractive to competition? Please explain why in your response.

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<sup>11</sup> Wherever possible please provide your response using the template at appendix 1 of this document.

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

4.2. In this chapter we ask for competitors’ views on the potential for further competition to develop in each of 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 we 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**

4.3. 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.

4.4. In its Competition Notices UKPN provides details of the number of competitors active in each DSA in the 12 months to October 2013. We have summarised this in Section 3.

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

### **Barriers to effective competition**

4.6. We consider that it is important to look at whether barriers to competition exist in the market that -

- prevent competitors from competing effectively (for example, barriers that may make it difficult for competitors to compete with UKPN in terms of service or price), or
- prevent further competition (for example, barriers that may make entering the RMS unattractive, or barriers that obstruct or delay entry to the RMS).

4.7. 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.

4.8. UKPN’s Competition Notices sets out the actions they have taken to address potential barriers to competition raised by a number of bodies, including -

- in work developed by the Competitive Networks Association (CNA)
- those identified by members of the Electricity Connections Steering Group (ECSG).



4.9. We invite respondents’ views on the existence of barriers to compete in any of the UKPN DSAs. We also invite views 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*

4.10. 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.

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

4.12. UKPN has held a series of workshops for ICPs and IDNOs, where “attendees are able to collaborate with a wide range of UK Power Networks representatives to agree desired improvement actions, hear about progress in delivering those actions, and on the effectiveness of their implementation.”

4.13. UKPN states that, following its negotiations with Ordnance Survey, competitors 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.

4.14. UKPN has created a new online G81 library containing useful documents for competitors, including design standards, specifications and drawings. This library is accessible from the competition in connections section of the UKPN website. An online index has been added to the library in August 2013, showing version numbers and the date of last revision for each document published in the library.

*Service and response times*

4.15. 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).

4.16. 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.

4.17. UKPN states that it “devotes considerable care and attention to ensuring that there is no discrimination between the services provided to competitors and those to our own connections customers”. It does this by offering voluntary “penalty payments to SLC 15 customers” for any

breaches in compliance with SLC 15 standards, and by the “development and operation of common, consistent policies, processes and pricing models wherever practicable.”

4.18. UKPN monitors the level of activity within its competition in connections team “on a regular basis”, and in 2012 it “invested in eight additional resources (a 38 per cent increase) to address increasing workloads and to improve service levels”. In June 2013, the team was increased by a “further nine resources”.

4.19. UKPN’s design acceptance process “allows for acceptance to be granted subject to the correction of minor errors or omissions, minimising delay to the customer”. UKPN has been working with an IDNO to agree a “generic IDNO substation design arrangement” that can be used in a “range of network connection situations.”

4.20. UKPN implemented a new process in December 2011 for ICPs to obtain consents and easements. According to UKPN, this places “more autonomy with the ICP” and simplifies the end-to-end process of obtaining land rights. A new approach to IDNO consents to improve the process of obtaining the necessary land rights is in development. The new approach was piloted with one IDNO in 2011 and UKPN states it is waiting for sign-off from IDNOs before full implementation. UKPN subsequently informed us that the new process was implemented in full with two IDNOs, and partially with another, from 1 September 2013. UKPN also added that one IDNO chose to remain with the existing process.

#### *Contractual arrangements for the adoption of assets built by ICPs*

4.21. 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.

4.22. In relation to metered work, UKPN states that it has reduced the amount of paperwork associated with construction and adoption agreements by using “standardised terms and conditions that are in line with its Section 16 agreements”.

#### *Inspection and monitoring of assets built by ICPs*

4.23. 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.

4.24. UKPN states that it has tried to learn from best practice at other DNOs by participating in the inspection and monitoring sub-group of the ECSG. As with previous UKPN Competition Notices, UKPN states that it has reviewed its audit and inspection regime but gives no details of that review and what changes, if any, were made to the audit and inspection regime following the review.

4.25. We seek views on UKPN’s performance in this area. Specifically, we are interested in whether UKPN’s processes for the inspection and monitoring of assets act as a barrier to competition.

*Arrangements for obtaining land rights*

4.26. 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.

4.27. Earlier in this section, we gave examples of actions that UKPN has taken to improve processes for land rights, including 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.

*Consistency of charges*

4.28. A potential barrier to competition will arise if there are differences between POC and an 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.

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

4.30. We seek respondents’ views on whether the non-contestable charges levied by UKPN for an all works quotes are consistent with those levied for POC quotes, and whether UKPN’s approach to charging for non-contestable work in a POC quote acts as a barrier to competition.

*Other potential barriers*

4.31. 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).

4.32. 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 others 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 the market segments covered by its Competition Notices?
- Do any of the potential barriers to the development of competition that have previously been identified still exist in the UKPN DSAs?

## **The future growth of competition**

4.33. We are interested in whether existing or potential competitors intend to expand or start their business in any of the market segments 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.

4.34. 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**

4.35. Further to the potential barriers to competition discussed earlier in this chapter, we note that the potential for competition to develop in any market segment 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.

4.36. We seek views of existing and potential competitors on what factors they consider are key influences on the development of competition in each market segment in UKPN’s DSAs.

4.37. 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.

4.38. 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**

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

4.40. 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.

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

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

4.43. Live jointing to LV underground radial mains was formally transferred to becoming a contestable activity on 26 October 2012. This applies to metered and unmetered connections in all three DSAs, with the exception of a small area within the LPN network in central London where additional operational work is required prior to carrying out any live jointing. UKPN’s Notices states that LV live jointing has “facilitated significant volumes of live jointing work to now be completed by ICPs particularly in respect of Highway Services connections.”

4.44. UKPN’s Notices state that it recognises that ICPs wish to compete in the LPN area and states that it is ready to provide a “fusing and linking (ie ‘operational activities’)” service that would allow LV live jointing to become contestable in this area.” In response to a clarification question, UKPN told us that the “fusing and linking” service to allow LV live jointing in the LPN normally interconnected network area has been made available to ICPs from 6 January 2014.

4.45. Since 31 July 2013, jointing of new HV cables to existing UKPN HV network has become a contestable activity. Under this arrangement, UKPN will provide “all of the associated operational activity”, and the ICP would carry out the “connection activity”. According to the notice, six HV joints have been completed by an ICP in the EPN area and two in the LPN area. Under these arrangements, the UKPN “Senior Authorised Person” would issue a “permit to work” to the ICP cable jointer, who will then make the cable joints. All other operational work, including removal and testing of earthing equipment and cables would be carried out by the UKPN.

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

- Split contestability. UKPN is willing to offer “elements of contestable works that the competitor does not wish to provide”. In response to feedback from competitors, UKPN has started with “non-standard substation civils design”, which is the “top priority” for competitors, particularly in the LPN area.
- Part funded reinforcement. UKPN has agreed with an ICP to carry out a pilot to include part funded reinforcement work to UKPN’s network. The pilot involved installing 2.5 km of 11 kV underground cable.
- 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.
- Generic designs. A pilot with a specific ICP whereby if the ICP submits a generic design for approval, the approval process will be “simplified as a significant part of the design will have previously been approved”.

4.47. 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.

4.48. 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 pilot stage and for newly contestable activities) that promote competition.

4.49. We ask existing and potential competitors whether they consider the extension of contestability is likely to stimulate further competition in the market segments covered by UKPN’s notices in any of its DSAs.

## 5. UKPN’s assessment of existing competitive activity

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### Chapter Summary

This chapter presents a summary of the information provided by UKPN to support its assessment of existing competitive activity in the market segments covered by its application 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 the market segments 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 segment?

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

5.1. 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 DSA.

5.2. The data presented in UKPN’s Competition Notices relates to the 12 month period to October 2013 for the metered demand HVHV market segment. For the unmetered segments, the data relates to the calendar years 2011, 2012 and 2013. The data for the full calendar year 2013 are forecasts based on actual data from January 2013 to September 2013.

5.3. UKPN has presented the following information on competitive activity within each RMS -

- For the metered demand HVHV alternative market segment, UKPN has provided data on connected load (kVA), estimated value and number of jobs. It also provides the number of ICPs/IDNOs that were issued POC quotes, and the number of ICPs/IDNOs that accepted such quotes.
- For the unmetered market segments, UKPN provides an estimate of the value of projects won by competitors. This is done by valuing work carried out by competitors at the price that UKPN would charge. UKPN has also provided information on the number of customers that signed “Asset Owner Agreements” with UKPN, and the number of ICPs appointed by those customers.

- For the unmetered market segments, UKPN also provides data on the number of customers that have used their “Rent a jointer” and “Jointer only” services.<sup>12</sup>

5.4. The tables below present the data for each market segment. We encourage interested parties to refer to UKPN’s Competition Notice for full details of its data analysis.

**Table 3: Existing competitive activity – Metered Demand HVHV, 12 months to October 2013**

Metered Demand HVHV market segment	EPN	LPN	SPN
<b>Size of RMS</b>			
Total size by value	£6 million	£20 million	£7 million
Total size by load (kVA)	141,212	210,686	74,922
Total size by jobs (numbers)	107	109	58
<b>UKPN share of the RMS</b>			
UKPN share by load	35%	38%	33%
UKPN share by jobs	28%	28%	21%
<b>Analysis of project values</b>			
Average load of UKPN jobs (kVA per job)	1,671	2,674	2,049
Average load of ICP/IDNO jobs (kVA per job)	1,183	1,651	1,188
<b>Activity by ICP/IDNOs</b>			
Number of ICPs/IDNOs requesting quotes	22	18	17
Number of ICPs/IDNOs successful in winning work	11	11	10

**Table 4: Existing competitive activity – UMC LA RMS (LPN only)**

Unmetered LA RMS	LPN
Number of customers using ICPs	13
Number of ICPs serving customers	5

<sup>12</sup> Both the “Rent a jointer” and “Jointer only” services allow the customer to engage a competitor to carry out all contestable works except the final jointing to the UKPN network. Under the Rent a jointer arrangement, the customer would secure the exclusive services of a UKPN jointing team to work under its schedule for an agreed period of time. Under the “jointer only” service, UKPN would carry out final jointing works to its schedule.



Number of customers using UKPN’s Rent a jointer service	6
Number of customers using UKPN’s jointer only service	5

**Table 5: UMC LA RMS (LPN only): value and split of work (2011–2013)**

Unmetered Local Authority RMS in LPN	2011	2012	2013*
Total size of RMS by value	£5.5 million	£6.1 million	£5.1 million
UKPN share of the RMS by value	89%	81%	84%

Source: Additional data provided by UKPN in response to a clarification question

\*Full year forecast based on an extrapolation of data to September 2013

**Table 6: Existing competitive activity – UMC Other RMS**

Unmetered Other RMS	EPN	LPN	SPN
Number of customers using ICPs	5	3	5
Number of ICPs serving customers	4	4	4
Number of customers using UKPN’s Rent a jointer service	-	1	-
Number of customers using UKPN’s jointer only service	9	4	15

**Table 8: Unmetered Other RMS: value and split of work, 2011 – 2013\***

	Value of all work in segment	UKPN’s share of work (by value)
<b>EPN</b>		
2011	£0.67 million	100%
2012	£1.98 million	54%
2013	£0.84 million	72%
<b>LPN</b>		
2011	£0.50 million	99%
2012	£0.93 million	62%
2013	£0.46 million	94%
<b>SPN</b>		
2011	£0.58 million	99%
2012	£0.79 million	90%



## Competition in connections – Consultation on UKPN’s Competition Notice

2013	£0.51 million	84%
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Source: Additional data provided by UKPN in response to a clarification question

\*Full year forecast based on an extrapolation of data to September 2013

## 6. UKPN’s compliance with the legal requirements test

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### 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

6.1. 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.

6.2. 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

6.3. For the purposes of this assessment of UKPN’s Competition Notice, submitted on 23 December 2013, the relevant regulatory year is 2013-14 which runs from 1 April 2013 to 31 March 2014.

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

**Future compliance with the Legal Requirements test**

6.5. 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 the relevant licensee to make repayment of some or all of the Margin that it had charged in its Connection Charges in relation to its Connection Activities in the Relevant Market Segment during a specified period of time.

## 7. Summary

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### 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.

### Question box

***In your response please indicate the DSA to which your experiences relate.<sup>13</sup>***

**Question 1:** Do you, as a customer or competitor, view these proposed alternatives as distinct segments within the connections market? Are they an appropriate way of segmenting the market for the assessment of effective competition?

**Question 2:** 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 3:** 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 4:** 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 5:** 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 6:** 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?

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

7.2. We note that UKPN retains a large proportion of the market in the DSAs 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.

7.3. We reiterate that the intention of our assessment is to judge 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

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<sup>13</sup> Wherever possible please provide your response using the template at appendix 1 of this document.

balance, consumer interests in the market segments covered by UKPN’s application are better protected by regulation than they would be by competition. We also remind respondents that if price regulation is lifted in these market segments, we will continue to monitor UKPN’s compliance with competition law and we will take seriously any evidence of anti-competitive behaviour.

7.4. 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 questions -

- Do you, as a customer or competitor, view these proposed alternatives as distinct segments within the connections market? Are they an appropriate way of segmenting the market for the assessment of effective competition?
- Is there currently effective choice for customers in the market segments and the DSAs covered by UKPN’s Competition Notices? 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 market segments 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 market segments 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?

7.5. 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 the market segments covered by UKPN’s application.

7.6. 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.

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

# Appendices

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## Index

Appendix	Name of Appendix	Page Number
1	Consultation Response and Questions	40
2	Background	50
3	The Legal Requirements and Competition Test	54
4	The Relevant Market Segments	56
5	Glossary	57
6	Feedback Questionnaire	60

## Appendix 1 - Consultation Response and Questions

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1.1. We 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. Responses should be received by 20 March 2014 and should be sent to:

James Veaney  
Smarter Grids and Governance Distribution Policy  
020 7901 1861  
[james.veaney@ofgem.gov.uk](mailto:james.veaney@ofgem.gov.uk)

1.4. Unless marked confidential, all responses will be published by placing them in our library and on its website [www.ofgem.gov.uk](http://www.ofgem.gov.uk). Respondents may request that their response is kept confidential. We 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.

1.5. Respondents who wish to have their responses remain confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. It would be helpful if responses could be submitted both electronically and in writing. Respondents are asked to put any confidential material in the appendices to their responses.

1.6. Next steps: Having considered the responses to this consultation, we intend to publish our decision in relation to UKPN’s Competition Notice in April 2014.



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 DSAs that are relevant to you in the table below.**

DSA	
Eastern Power Networks plc	<input type="checkbox"/>
London Power Networks plc	<input type="checkbox"/>
South Eastern Power Networks plc	<input type="checkbox"/>

**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
<b>One:</b> Do you, as a customer or competitor, view these proposed alternatives as distinct segments within the connections market? Are they an appropriate way of segmenting the market for the assessment of effective competition?	Metered HVHV <input type="checkbox"/>	EPN <input type="checkbox"/>	
	Unmetered (LA) <input type="checkbox"/>	LPN <input type="checkbox"/>	
	Unmetered (Other) <input type="checkbox"/>	SPN <input type="checkbox"/>	
<b>Two:</b> Do you consider that UKPN's definitions of its proposed alternative	Metered HVHV <input type="checkbox"/>	EPN <input type="checkbox"/>	
	Unmetered (LA) <input type="checkbox"/>	LPN <input type="checkbox"/>	

Question	RMS(s)	DSA(s)	Response
segments are clear and unambiguous?	Unmetered <input type="checkbox"/> (Other)	SPN <input type="checkbox"/>	
<b>Three:</b> Please provide details of any connection activity which would be difficult to categorise under the proposed alternative segments.	Metered HVHV <input type="checkbox"/>	EPN <input type="checkbox"/>	
	Unmetered (LA) <input type="checkbox"/>	LPN <input type="checkbox"/>	
	Unmetered (Other) <input type="checkbox"/>	SPN <input type="checkbox"/>	
<b>Four:</b> Are there other factors that we should take into account in deciding whether to accept or reject UKPN’s proposed definitions of the alternative market segments?	Metered HVHV <input type="checkbox"/>	EPN <input type="checkbox"/>	
	Unmetered (LA) <input type="checkbox"/>	LPN <input type="checkbox"/>	
	Unmetered (Other) <input type="checkbox"/>	SPN <input type="checkbox"/>	

### **Chapter Three**

Question	RMS(s)	DSA(s)	Response
<b>One:</b> Are customers aware that competitive alternatives exist?	Metered HVHV <input type="checkbox"/>	EPN <input type="checkbox"/>	
	Unmetered (LA) <input type="checkbox"/>	LPN <input type="checkbox"/>	
	Unmetered (Other) <input type="checkbox"/>	SPN <input type="checkbox"/>	
<b>Two:</b> Do customers have effective choice, ie are they easily able to seek quotations from competitive alternatives?	Metered HVHV <input type="checkbox"/>	EPN <input type="checkbox"/>	
	Unmetered (LA) <input type="checkbox"/>	LPN <input type="checkbox"/>	
	Unmetered <input type="checkbox"/>	SPN <input type="checkbox"/>	

Question	RMS(s)	DSA(s)	Response
	(Other)		
<b>Three:</b> Does UKPN take appropriate measures to ensure that customers are aware of competitive alternatives?	Metered HVHV <input type="checkbox"/> Unmetered (LA) <input type="checkbox"/> Unmetered (Other) <input type="checkbox"/>	EPN <input type="checkbox"/> LPN <input type="checkbox"/> SPN <input type="checkbox"/>	
<b>Four:</b> Are quotations provided by UKPN clear and transparent? Do they enable customers to make informed decisions whether to accept or reject a quote?	Metered HVHV <input type="checkbox"/> Unmetered (LA) <input type="checkbox"/> Unmetered (Other) <input type="checkbox"/>	EPN <input type="checkbox"/> LPN <input type="checkbox"/> SPN <input type="checkbox"/>	
<b>Five:</b> 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 HVHV <input type="checkbox"/> Unmetered (LA) <input type="checkbox"/> Unmetered (Other) <input type="checkbox"/>	EPN <input type="checkbox"/> LPN <input type="checkbox"/> SPN <input type="checkbox"/>	

**Chapter Four**

Question	RMS(S)	DSA(S)	Response
<p><b>One:</b> Does the level of competitive activity in the market segments show that there is the potential for further competition to develop?</p>	<p>Metered HVHV <input type="checkbox"/></p> <p>Unmetered (LA) <input type="checkbox"/></p> <p>Unmetered (Other) <input type="checkbox"/></p>	<p>EPN <input type="checkbox"/></p> <p>LPN <input type="checkbox"/></p> <p>SPN <input type="checkbox"/></p>	
<p><b>Two:</b> Consider the organisational structure of UKPN’s business and its procedures and processes –</p> <p><b>(a)</b> how do they compare to those you encounter elsewhere in the gas and electricity markets or other industries? Do they reflect best practice?</p> <p><b>(b)</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?</p> <p><b>(c)</b> do they assist, obstruct</p>	<p>Metered HVHV <input type="checkbox"/></p> <p>Unmetered (LA) <input type="checkbox"/></p> <p>Unmetered (Other) <input type="checkbox"/></p>	<p>EPN <input type="checkbox"/></p> <p>LPN <input type="checkbox"/></p> <p>SPN <input type="checkbox"/></p>	

Question	RMS(S)	DSA(S)	Response
or delay connections providers entering the market segment?			
<p><b>Three:</b> 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? Do the differences in charges between a POC quote and the non-contestable elements of a full works quote act as a barrier to competition?</p>	<p>Metered HVHV <input type="checkbox"/></p> <p>Unmetered (LA) <input type="checkbox"/></p> <p>Unmetered (Other) <input type="checkbox"/></p>	<p>EPN <input type="checkbox"/></p> <p>LPN <input type="checkbox"/></p> <p>SPN <input type="checkbox"/></p>	
<p><b>Four:</b> What factors are key influences on development of competition in the market segments? In particular, if you are an existing/potential competitor:</p> <p><b>(a)</b> what is the potential for competitors to enter the market segments, or grow their share of the market segments if they already operate in?</p> <p><b>(b)</b> are there any types of connection in the market segments, or geographic locations in</p>	<p>Metered HVHV <input type="checkbox"/></p> <p>Unmetered (LA) <input type="checkbox"/></p> <p>Unmetered (Other) <input type="checkbox"/></p>	<p>EPN <input type="checkbox"/></p> <p>LPN <input type="checkbox"/></p> <p>SPN <input type="checkbox"/></p>	

Competition in connections – Consultation on UKPN’s Competition Notice

<b>Question</b>	<b>RMS(S)</b>	<b>DSA(S)</b>	<b>Response</b>
UKPN’s DSAs, that by their nature, are not attractive to competition? Please explain why in your response.			

**Chapter Five**

Question	RMS(S)	DSA(S)	Response
<b>One:</b> Do you agree with the methods used by UKPN to assess the level of competition in the market segments 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 segment?	Metered HVHV <input type="checkbox"/>	EPN <input type="checkbox"/>	
	Unmetered (LA) <input type="checkbox"/>	LPN <input type="checkbox"/>	
	Unmetered (Other) <input type="checkbox"/>	SPN <input type="checkbox"/>	
<b>Two:</b> Do you consider that competitive activity is at a level that in itself indicates that effective competition exists? In each market segment, do you consider that the coverage of existing competitive activity extends across segment?	Metered HVHV <input type="checkbox"/>	EPN <input type="checkbox"/>	
	Unmetered (LA) <input type="checkbox"/>	LPN <input type="checkbox"/>	
	Unmetered (Other) <input type="checkbox"/>	SPN <input type="checkbox"/>	

**Chapter Seven**

Question	RMS(S)	DSA(S)	Response
<b>One:</b> Do you, as a customer or competitor, view these proposed alternatives as distinct segments within the connections market? Are they an appropriate way of	Metered HVHV <input type="checkbox"/>	EPN <input type="checkbox"/>	
	Unmetered (LA) <input type="checkbox"/>	LPN <input type="checkbox"/>	
	Unmetered (Other) <input type="checkbox"/>	SPN <input type="checkbox"/>	

Question	RMS(S)	DSA(S)	Response
segmenting the market for the assessment of effective competition?			
<b>Two:</b> 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?	Metered HVHV <input type="checkbox"/> Unmetered (LA) <input type="checkbox"/> Unmetered (Other) <input type="checkbox"/>	EPN <input type="checkbox"/> LPN <input type="checkbox"/> SPN <input type="checkbox"/>	
<b>Three:</b> 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 HVHV <input type="checkbox"/> Unmetered (LA) <input type="checkbox"/> Unmetered (Other) <input type="checkbox"/>	EPN <input type="checkbox"/> LPN <input type="checkbox"/> SPN <input type="checkbox"/>	
<b>Four:</b> 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?	Metered HVHV <input type="checkbox"/> Unmetered (LA) <input type="checkbox"/> Unmetered (Other) <input type="checkbox"/>	EPN <input type="checkbox"/> LPN <input type="checkbox"/> SPN <input type="checkbox"/>	



Competition in connections – Consultation on UKPN’s Competition Notice

Question	RMS(S)	DSA(S)	Response
<b>Five:</b> 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?	Metered HVHV <input type="checkbox"/> Unmetered (LA) <input type="checkbox"/> Unmetered (Other) <input type="checkbox"/>	EPN <input type="checkbox"/> LPN <input type="checkbox"/> SPN <input type="checkbox"/>	
<b>Six:</b> 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 HVHV <input type="checkbox"/> Unmetered (LA) <input type="checkbox"/> Unmetered (Other) <input type="checkbox"/>	EPN <input type="checkbox"/> LPN <input type="checkbox"/> SPN <input type="checkbox"/>	

# Appendix 2 – Background

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This appendix 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

1.7. 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.

1.8. 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

1.9. 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.

1.10. 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.

1.11. 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**

1.12. Since the introduction of competition<sup>14</sup> 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.

1.13. In the metered electricity connections market (across all DNOs), market penetration by new entrants<sup>15</sup> 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.<sup>16</sup>

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

1.14. 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).<sup>17</sup>

1.15. 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.

1.16. The arrangements introduced at DPCR5 have however enabled DNOs to earn a regulated margin (set at four per cent above cost)<sup>18</sup> 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

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<sup>14</sup> Competition was introduced in gas connections in 1998 and electricity connections in 2000.

<sup>15</sup> ICPs and Independent Distribution Network Operators (IDNOs).

<sup>16</sup> Note that market penetration by new entrants (metered connections) rose to 23 per cent in 2010-11.

<sup>17</sup> Charge Restriction Condition 12 - <http://epr.ofgem.gov.uk/index.php?pk=folder575248>

<sup>18</sup> Previously under DNO approved connection charging methodologies their connection charge were limited to recovery of reasonable costs.

viable. They also include 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.

1.17. 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.

1.18. 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.

1.19. 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,<sup>19</sup> 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).

1.20. 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.

1.21. 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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<sup>19</sup> 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

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1.22. 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.

1.23. 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**


1.24. 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**

1.25. 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);



## Competition in connections – Consultation on UKPN’s Competition Notice

- 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

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

1.27. 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.)

1.28. 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.)

1.29. 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.)

1.30. 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

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### 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.

**U**

**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 and South Eastern Power Networks plc.

## Appendix 6 - Feedback Questionnaire

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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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