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Legal and Regulatory Updates

Smart meter data: A behavioural marketer's dream?

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Topic: Privacy

Who: UK Government

Where: UK

When: 5 April 2012

Law stated as at: 1 May 2012

What happened

The Department for Energy and Climate Control (DECC) released its Smart Metering Implementation Programme — Data access and privacy: Consultation document.

Background

Smart metering is to be rolled out across the United Kingdom from 2014, enabling electricity and gas companies to automatically monitor and measure power usage. The consultation document on data access and privacy published on 5 April by DECC is one of several concerning these plans.

A smart meter is, in essence, capable both of monitoring how much electricity or gas is going into any given property and sending information directly back to the supplier. Meters may also provide further features, including the ability to turn the power supply to the property off and on, detect and report on power cuts, and impose limits on how much electricity or gas a user can draw. The technology is already in use both in the United Kingdom and internationally; however, the UK Government aims to lead the way by having a smart meter in every house by 2019.

The primary advantage of smart meters is that they can obtain real-time data about energy consumption to help match supply and demand more effectively. The vision is that suppliers are then able to move to different pricing structures, and thus electricity becomes cheaper when it is more readily available and more expensive at peak usage times. Overall, energy usage should fall, bringing environmental benefits.

Potential commercial applications

However, there is also little doubt that the technology also has potential for marketers. The data collected by smart meters have the capability to track consumer behaviour patterns and give anything from an approximate indication to detailed information as to which household appliances consumers are using and when.

Two German researchers earlier this year published controversial claims regarding smart meter data security, having run various tests on a smart meter made by a particular German company. In addition to highlighting several alleged security flaws, their tests claimed to show how much information could be gleaned from a smart meter that reported electricity use as frequently as every 2 seconds. The researchers reportedly were able to identify information such as when houses were occupied and when specific appliances were being used from patterns in the smart meter power usage data.

Manufacturers are already lining up to develop ‘smart appliances’, which will make use of the data passing through the smart meter to improve performance, regulate their energy use depending on the cost or availability of electricity or gas, or display current tariff information. It seems likely that there will be significant marketing opportunities in this area as the rollout continues.

DECC proposed controls on use of data

There has been international consumer concern about the installation of smart meters. Concerns include the sensitivity and security of the data being transmitted and how this is handled and shared, the enhanced potential for hackers to disrupt a key part of national infrastructure, the ever-present possibility of ‘function creep’, and in the United Kingdom, the sheer scale of the project.

DECC appears to have taken some of these concerns on board in its consultation on data privacy and the marketing aspects of smart metering, which was released on 5 April 2012 and ran until 1 June 2012. The Government sought views on various aspects of smart metering, including how customers access their data and proposed a framework for the use of this data by suppliers, network operators and third parties (such as price comparison sites and energy service businesses).

Consumer protection

Regarding consumers, the DECC consultation states that

consumers should be able easily to access their own smart metering energy consumption data, and share it with third parties, should they choose to... [which] ...will enable consumers to use their data to reduce energy consumption and save money on bills.

DECC goes on to state that:

... research highlights that consumers are increasingly aware that their personal data has a commercial value, that they want to have control over such data, and that they would consider sharing their data if it is clear that they will derive benefit from this.

Communications to and from smart meters will be provided by the Data and Communications Company (DCC), which will be established for this specific purpose. DECC intends to put safeguards in place to verify the identity of third parties who have been given permission to access the consumption data from the DCC:

Where consumers give third parties permission to access their energy consumption data remotely via the Data and

Communications Company (DCC), the Government proposes that arrangements should be put in place to protect consumers.

In particular, the Government is proposing to use the Smart Energy Code to ensure that third parties take steps to verify that the request for third party services has come from the individual living in the premises in question; properly obtain consent from consumers to access their data; and provide annual reminders to consumers about the data that is being collected.

Supplier use of data

The proposed framework for suppliers:

- allows suppliers to access monthly (or longer period) energy consumption data without consent for the purpose of billing and fulfilling other statutory requirements and licence obligations;
- allows suppliers to access daily (or longer period) energy consumption data for any purpose except marketing provided that the consumer has a 'clear opportunity' to opt out; and
- requires suppliers to gain explicit (opt-in) consent from the customer to access half-hourly energy consumption data or to use energy consumption data for marketing purposes.

The Government proposed that this framework be monitored and enforced by the Smart Energy Code Panel, who will develop audit requirements to do this.

Why this matters

While the final regulatory landscape surrounding smart metering in the United Kingdom is not yet entirely clear, the consultation document signals that the Government intends to have strict controls on data received from smart meters. Even energy suppliers must give consumers an opt-out if they are accessing daily energy data. Any shorter period than this requires a specific opt-in and appears to be capped at half-hourly intervals. Any marketing use of the data also requires specific opt-in consent.

However, the fact that the consultation deals with marketing use at all suggests that the commercialization of these data has at least been envisaged.

The consultation plans to limit the proposed maximum level of granularity made available to suppliers, network operators and third parties in the United Kingdom to half-hourly data. This level was set partly due to privacy concerns among consumer groups, and partly due to the maximum level of detail that is needed to provide worthwhile value-added services. It remains to be seen whether suppliers, network operators and third parties will consider half-hourly readings sufficient to meet their requirements, and it will be interesting to see what responses the consultation elicits on this point from all of these camps.

As an example of current practice, British Gas, which is rolling out smart meters to its customers at the moment, has made it clear that it will not sell energy consumption data to third parties.

However, it seems possible that energy companies may attempt to acquire consent to third parties receiving smart meter data when consumers sign up in future. This could provide them with data

segmented by energy usage and possibly even more detailed information such as appliances owned, which could be highly saleable.

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Radio station seeks judicial review of ‘political ad’ ban

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Topic: Political

Who: London Christian Radio (LCR) Ltd and Christian Communications Partnership (CCP) and the Radio Advertising Clearance Centre (RACC), operator of the national radio station ‘Premier Christian Radio’

Where: High Court of Justice (Administrative Court), London

When: 20 April 2012

Law stated as at: 3 May 2012

What happened

LCR, operator of the Premier Christian Radio station, and CCP wished to broadcast the following advertisement on the radio:

We are CCP. Surveys have shown that over 60 per cent of active Christians consider that Christians are being increasingly marginalized in the work place. We are concerned to get the most accurate data to inform the public debate. We will then use this data to help make a fairer society. Please visit [CCP’s website] and report your experiences.

On 28 May 2010, they submitted this advertisement to the RACC for clearance in advance of being broadcast. The RACC refused to clear it. In the course of correspondence between LCR, CCP and the RACC, LCR and CCP confirmed that the data gathered from respondents to the advertisement would be published and would have implications for the Government and bodies such as the Equal Opportunity Commission.

In light of this, the RACC was of the view that since the advertisement sought to influence or change government policy, this rendered the advertisement unacceptable under the BCAP Advertising Code and was an infringement of the prohibitions on political advertising in Sections 319 and 321 of the Communications Act 2003 (the 2003 Act).