

7th February 2017

UNC Modification 0593 – Response

E.ON would like to provide a more detailed response to the consultation on UNC Modification 0593 than the standard response template provides for. These comments are to be read in conjunction with the standard response form.

We are in support of efforts being made to improve customer engagement in the switching process as it provides benefits to consumers and to competition and to this end we have participated in both this UNC Modification Workgroup and Cross-codes Workgroups which are seeking to give effect to the CMA Order on this issue.

MRASCO established a joint codes workgroup - the TPAG (which included PCWs, TPIs, Suppliers, DNOs, GDNs, Xoserve and Gemserv) to consider how best to develop a solution to the proposed CMA Order for ECOES/DES access. They worked on a common solution for PCS & TPI to access ECOES/DES data based around an API interface between the providers and Users, and on that basis and at that time, the CMA remedy didn't present any significant concerns.

We are supportive of the conclusions the workgroup came to - a joint API interface between PCWs and TPIs that will deliver both the electricity and gas data to support switching activity. The benefits of a joint interface would be enriched data matching for dual fuel switching, and hopefully it would deliver a more cost effective solution for both providers and users as a single solution rather than two distinct and separate connections.

However, it has become clear that a dual fuel API solution that the TPAG Consultation favoured cannot be made available for the date required by the order, and so both ECOES and DES providers have had to address how to deal with the issue of compliance with the order within the frameworks of the existing systems and governance.

We believe the requirement of the modification to just give access to DES to PCWs and TPIs is flawed as a solution to comply with the CMA Order on a number of points:

1. The CMA Order specifically references the solution being for the facilitation of Domestic Switching. Individual Users access to the existing DES system cannot be restricted at this time to just those sites covered by the order, therefore once DES access is granted at the system level there are no actual controls that Xoserve can deploy to limit which sites can be accessed, and therefore all supply points on the the DES system will be available to view.

This raises concerns about the privacy of other customer's data within the system (potentially those of businesses which are operated in such a way as to be afforded the same DPA rights as those of a domestic customer, but who choose to enter into commercial contracts for energy), and it means that the principles of the DPA about adequacy may not met..."Principle 3: the Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed." If access wider than the order is permitted, it cannot meet this DPA Principle, nor does it meet the terms of the Order.

2. Unlike its electricity equivalent system – ECOES, there are no audit capabilities or reports that can currently be produced that Xoserve can utilise to ensure that the system and/or data are only accessed in accordance with the contract between the PCWs/TPIs and Xoserve. ECOES can build in upfront controls that can be customised at a User level, whereas Xoserve will have to rely on requirements placed in the contract on the PCSs and TPIs to self-report any breach of the contract. It is reasonable to assume that parties are unlikely to self-report a breach, unless the consequences for not doing so are substantial. Since the CMA requires the terms offered to PCWs and TPIs to be reasonable, it is unlikely they would view any sizeable penalties favourably or in the spirit of reasonableness.
3. The ICO have asserted that the ECOES and DES databases contain personal data and therefore the DPA and the new GDPR will apply to the use of the data within these systems, and probably to the data that they combine it with – such as GB Group data. A Privacy Impact Assessment (PIA) hasn't been provided with the modification that addresses how Xoserve can demonstrate that the risks identified during the development of the modification are mitigated.
4. When DES was originally designed, it was done to provide access to the data that licenced parties under regulatory agreements need to operate. It was not designed for a more commercial provision to unregulated entities, and as such any existing PIA for the original design is insufficient for the use now envisaged. The ICO is urging organisations in the run up to the introduction of the new GDP Regulations to ensure that security is robust to prevent the disclosure of third party data to unauthorised recipients. It's not clear that the solution proposed achieves this objective.
5. PCWs and TPIs are an unregulated part of the industry – having no requirements to have a licence to operate, neither are they required to be accredited by Ofgem's Confidence Code therefore there is an greater risk that they are able to operate without the same assurance and robust controls that protect customers from the misuse of their information.

6. This modification introduces new risks on shippers and their suppliers from the 1st of April and increasingly so from May 2018 (with the introduction of GDP Regulations). The risk of misuse of customer's data currently falls on the party able to grant access (The Gas Transporters and Xoserve) and who were responsible for the design of the system access and security properties. From 1st April 2017 the introduction of the new FGO model means that the risk of any breach no longer rests solely with the Gas Transporters – as the mutual nature of Xoserve as CDSP means that Shippers/Suppliers equally share the risk of any liabilities imposed for a breach of Data Protection as they have a contractual obligation to hold Xoserve neutral to the impact of any liability.

The risk from the introduction of the new GDP Regulations further increases that risk – as not only would any liability for Xoserve's breach be smeared across all CDSP Users, the data owners would also be accountable to the ICO too – customers would ultimately pick up any cost of this through their tariffs, therefore anyone wishing to access this data must do so in a manner that protects the customer from any foreseeable risks stemming from the User's behaviours, and the system must be sufficiently configurable to provide only the access the order envisages.

As CDSP parties, we must all be able to ensure that the appropriate controls and checks exist to mitigate the risk of misuse, as the consequences for any failure no longer fall directly to the Gas Transporter or their Agent, and nothing in the modification or the CDSP contract protects us from any consequences of a breach as a result of Xoserve or the Gas Transporters granting this access to PCWs and TPIs. Since the contractual terms are opaque to CDSP parties, we bear the risk of any breach of data protection, however we are unable to assure ourselves of the adequacy of the controls within the contract to mitigate our risk, but at the same time we understand the limitations of the DES System.

7. The CMA requires the ability to monitor the carrying out of the Order so that it can review its effectiveness; unlike ECOES the solution in this modification will not provide any reporting that the CMA can utilise to review whether the Order has improved customer engagement in switching, it can merely advise who has contracted for access to the data, but not whether they have accessed any of the data, and therefore the solution cannot demonstrate any measure of effectiveness of the order.
8. The CMA Order stipulates that the terms of access must be on reasonable terms and subject to the satisfaction of "reasonable access conditions". Those reasonable access conditions must include suitable safeguards concerning data protection and data security. Given the inability of the current DES system to provide those data security and data privacy controls, it



is difficult to assert that the DES system access as proposed by the Gas Transporters in the modification and the solution being developed by Xoserve are reasonable.

9. The question of the ICO comments on the CMA Order hasn't been addressed in the modification or the workgroup report. The Gas Transporters need to consider whether the CMA or indeed Ofgem have the powers to override the ICO concerns in respect of compliance with DPA on this matter. The ICO are concerned that "reasonable access conditions" was not defined by the CMA, and no guidance was provided to Xoserve or the Gas Transporters in the order or in the Explanatory Notes to the order.
10. The ICO draws out specifically the point that more care is needed in moving data from a more stringent regulatory environment to a less stringent one, and that this does not expose the data to unnecessary risk or leave consumers without control or recourse.

The CMA Order requires the Gas Transporters to use their best endeavours to ensure the modification is approved and implemented as soon as reasonably practicable after the date of the order. Compliance to the specific wording in some parts of the order has been prioritised to the detriment of parts of the order. We believe that the best way to deliver the CMA Order therefore would not be to grant DES Access in the way currently proposed, but to work with the industry to bring the API solution forward without any further delay.

Since this solution is built on the ECOES system it has all the levels of control and reporting required already built in, it would be a matter of incorporating the gas DES data into ECOES with the necessary commercial agreements between established between Xoserve and the ECOES providers. The ECOES solution has already been re-designed to incorporate the gas data and so we consider it would be quicker to bring a unified ECOES/DES data delivery solution together in a single interface for the PCWs and TPIs than for Xoserve to build a bespoke gas data system with the controls and reporting that would be required, particularly at a time of particular pressure on Xoserve resources with the delivery of the major industry reforms being brought about by UK Link Replacement.

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