

## Representation - Draft Modification Report 0593V

### Provision of access to Domestic Consumer data for Price Comparison Websites and Third Party Intermediaries

Responses invited by: **5pm on 08 September 2017**

To: [enquiries@gasgovernance.co.uk](mailto:enquiries@gasgovernance.co.uk)

<b>Representative:</b>	Dan French
<b>Organisation:</b>	npower
<b>Date of Representation:</b>	07/09/2017
<b>Support or oppose implementation?</b>	Qualified Support
<b>Relevant Objective:</b>	d) Positive/

#### Reason for support/opposition: Please summarise (in one paragraph) the key reason(s)

We support the CMA Order as this will facilitate consumer engagement and improve the switching process. This will reduce actual and perceived barriers to switching resulting from erroneous transfers and failed switches.

We note that the original modification was sent back to the workgroup following difficulties highlighted with controls around monitoring PCW/TPI usage within DES by Ofgem.

Although the API solution and the amended version of the modification do alleviate the majority of the issues highlighted, we still have concerns on the actual monitoring of PCW/TPI access and usage as it happens and do not see that papers provided currently cover that in sufficient detail. This is highlighted further in this response.

We note in the PIA that there are references to Xoserve putting in place bespoke agreements with the PCWs/TPIs to enable access to the gas database – it states it will include that those organisations will be required to have the appropriate technical and organisation security in place. However, to be fully compliant under GDPR those agreements also require a number of other clauses to be added to deal with the requirements of Article 28 of the GDPR. They do include audit requirements but there are also other requirements in relation to reporting security breaches, keeping data confidential, appropriate training etc. We need confirmation that those additional provisions will be included.

The contracts also need to specifically set out what data the TPI/PCW will be allowed access to and the permitted purposes that the data can be used for (as narrowly defined as possible).

We note in relation to consent that it says that the requirements on gaining customer consent “can be audited” we believe this needs to be “will be audited on a regular basis” to ensure compliance with those requirements – we do not believe it is sufficient just to have clauses in

a contract you have to actually take steps to ensure people are complying. We also note that the CMA actually refers to putting in place appropriate audits for security reasons but that should include checking consents (included in the PCW access document).

The papers state that the contracts will contain the specific requirements for access to the system (i.e. the permitted purposes). On renewal of contracts validation will take place again – those are set out. The reference to being registered with the ICO is we believe not a requirement under GDPR so we need more detail on what is proposed and the checks that need to be made are GDPR compliant.

**Implementation:** *What lead-time do you wish to see prior to implementation and why?*

We would expect to see implementation as soon as possible, providing that the concerns and detail above and below had been sufficiently addressed and provided.

**Impacts and Costs:** *What analysis, development and ongoing costs would you face?*

We are not clear on how the costs will be met, so further clarity would be welcomed.

**Legal Text:** *Are you satisfied that the legal text will deliver the intent of the Solution?*

Yes we believe that the legal text will deliver the intent of the solution.

**Modification Panel Members have requested that the following questions are addressed:**

*Q1: To inform Panel's consideration of the varied modification, views are requested as to whether you agree that Ofgem's sendback questions have been addressed in the revised modification.*

***Whether shippers and suppliers are data controllers in this context and the implications of this for data disclosure as well as any mitigating actions that should be taken?***

We don't think we are the controller. We are the controller of our customer's data but we are required to provide it to create an industry database that stores all records of customers throughout the UK. We (and others) are then allowed access to that data for limited purposes (change of supply) for which the holder of the database (xoserve) has control as they need to ensure the security of that database and can monitor each supplier's activity and ultimately could prevent access to anyone if they do not use the database in the way intended. If there are any remaining doubts then the opinion of the ICO should be sought.

***How PCWs and TPIs will have their access to data restricted (contractually or otherwise), including for access to non-domestic supply point data which is not permitted by the proposed modifications?***

That seems to have been dealt with in the API solution as they will create a unique dataset that will only contain a limited domestic customer dataset.

***What provisions are in place to ensure consumer consent will be positive informed consent?***

Again this seems to have been dealt with as there will be contractual requirements placed on the PCWs to ensure that they obtain consent and audits can be undertaken on their access and on the obtaining of consent (as we have said above we prefer “will” as opposed to “can” to ensure compliance). To be 100% sure that the data protection requirements are covered off then we really need sight of the contracts that will be put in place between xoserve and the PCWs.

***Any implications and mitigating actions that should be taken in the context of the changes to Xoserve’s governance and funding arrangements as a result of FGO and the forthcoming implementation of the GDPR?***

All organisations need to comply with GDPR so that needs to be factored in to any system changes, contracts etc.

**Are there any errors or omissions in this Modification Report that you think should be taken into account?** *Include details of any impacts/costs to your organisation that are directly related to this.*

None

**Please provide below any additional analysis or information to support your representation**

None