

UNC Final Modification Report		At what stage is this document in the process?
<h1>UNC 0593:</h1> <h2>Provision of access to Domestic Consumer data for Price Comparison Websites and Third Party Intermediaries</h2>		<div style="display: flex; flex-direction: column; gap: 5px;"> <div style="border: 1px solid #00a651; border-radius: 5px; padding: 5px; display: flex; align-items: center; gap: 5px;"> <span style="background-color: #00a651; color: white; border-radius: 50%; padding: 2px 5px;">01</span> Modification         </div> <div style="border: 1px solid #0070c0; border-radius: 5px; padding: 5px; display: flex; align-items: center; gap: 5px;"> <span style="background-color: #0070c0; color: white; border-radius: 50%; padding: 2px 5px;">02</span> Workgroup Report         </div> <div style="border: 1px solid #9933cc; border-radius: 5px; padding: 5px; display: flex; align-items: center; gap: 5px;"> <span style="background-color: #9933cc; color: white; border-radius: 50%; padding: 2px 5px;">03</span> Draft Modification Report         </div> <div style="border: 1px solid #e69d00; border-radius: 5px; padding: 5px; display: flex; align-items: center; gap: 5px;"> <span style="background-color: #e69d00; color: white; border-radius: 50%; padding: 2px 5px;">04</span> Final Modification Report         </div> </div>
<p><b>Purpose of Modification:</b></p> <p>This is an enabling modification, which seeks to create the necessary permissions in UNC to permit the release of domestic consumer data to Price Comparison Websites (PCWs) and Third Party Intermediaries (TPIs) to satisfy the CMA Energy Market requirements. The release of data is subject to validations undertaken by the Transporter and would be pursuant to data protection principles.</p>		
	The Panel does not recommend implementation	
	High Impact: None	
	Medium Impact: None	
	Low Impact: Transporters' Agent	

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Timetable	
<b>Modification timetable:</b>	
Initial consideration by Workgroup	25 August 2016
Amended modification considered by Workgroup	22 December 2016
Workgroup Report presented to Panel	19 January 2017
Draft Modification Report issued for consultation	19 January 2017
Consultation Close-out for representations	09 February 2017
Final Modification Report available for Panel	10 February 2017
Modification Panel Recommendation	16 February 2017



Any questions?

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## 1 Summary

### What

This is an enabling modification seeking to grant permission to release domestic consumer data to Price Comparison Websites (PCWs) /Third Party Intermediaries (TPIs).

### Why

The Competition and Market Authority (CMA) Energy Markets Investigation proposed a requirement for Transporters to provide PCWs/TPIs access to data for the purpose of allowing them to check or obtain MPRNs for consumers seeking to switch supplier, and to check other information provided by these consumers against the data held by the Transporter. The release of this data is strictly limited for these purposes only.

### How

In order to allow PCWs/TPIs to be permitted access to domestic consumer data, the necessary permission and any restrictions or requirements on PCWs/TPIs needs to be created within the Uniform Network Code (UNC), with the service provided in SPAA Schedule 23, section 6.4.

## 2 Governance

### Justification for Self-Governance

This modification does not qualify for self-governance. Although it is simply allowing the release of data (subject to pre-defined conditions) to PCWs/TPIs, a subsequent increase in consumers seeking to switch supplier could have a material impact on parties to the UNC, consumers and competition.

### Requested Next Steps

This modification should:

- proceed to Implementation decision

The Workgroup considers the modification is not suitable for Self-Governance (see above). The modification is sufficiently developed that it could be implemented and therefore it should proceed to consultation.

## 3 Why Change?

The CMA issued its Energy Market investigation final report in June 2016 (the Report). The Report sets out reasoning for erroneous transfers and failed switches, and concludes that there is a requirement for PCWs/TPIs to be given access with the same conditions and in the same manner as is currently the case for suppliers. This will allow them to check or obtain MPRNs for consumers seeking to switch supplier and to check other information provided by these consumers. This should help to reduce the number of erroneous transfers and failed switches. Use of the data by PCWs/TPIs is strictly limited to these purposes only.

The CMA intends to place an 'order' on Xoserve and the Gas Transporters to grant data access to PCWs/TPIs upon request, subject to reasonable access conditions, to assist consumers seeking to switch.

This modification would, with sufficient controls in place, grant permissions to the above data, for PCWs/TPIs.

The requirement to provide suitable data will be set out within the CMA order and is supported by Ofgem. Gas Transporters are actively supporting these requirements, removing the need for a licence obligation.

This modification should be considered as 'enabling' since the change would mainly be of benefit to PCWs/TPIs and Suppliers, which are not Code parties and therefore, of indirect benefit to UNC parties.

## 4 Code Specific Matters

### Reference Documents

Please find the link for: CMA Energy Market Investigation – Final report here;

<https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf>

Some of the relevant paragraphs are as below:

13.324 We agree with suppliers that the terms on which PCWs are provided with access to the ECOES and SCOGES databases should allow for them to check or obtain MPAN and MPRN numbers for customers seeking to switch supplier and to check other information provided by these customers against that held in the database and should be strictly limited to these purposes. We would expect that the conditions for accessing the ECOES and SCOGES databases to include conditions that strictly limit the use of data for these purposes.

13.325 We also agree that the number of erroneous and failed transfers avoided might be small. However, we consider that a small number of erroneous and failed transfers could be expected to have a wide impact on customer perceptions (see paragraph 13.352) and disproportionate impact on domestic customers' confidence in the use of PCWs and perception about the ease of switching more generally.

13.330 Ofgem said it strongly agreed with implementing the remedy through an order and suggested that to improve the prospect of timely implementation the CMA should specify a timescale in the order. Ofgem also said the scope of the data that PCWs should be able to access should be clarified to assist speedy implementation.

13.343 The aim of this remedy is to reduce actual and perceived barriers to switching resulting from erroneous transfers and failed switches, and we consider, based on responses to our provisional decision on remedies 265, that access to the ECOES and SCOGES databases will also benefit other TPIs providing similar services to PCWs.

13.344 In light of the above, this remedy will require (through a CMA order) the code administrator or governing body with authority to grant access to the ECOES database to grant access to the database to PCWs (and other TPIs providing similar services). This remedy will also require (through a CMA order) gas transporters to grant access to the SCOGES database to PCWs (and other TPIs providing similar services) on reasonable terms. We understand that amendments to the relevant industry codes may be required. Therefore, this remedy will also require gas transporters to make any necessary amendments to the Uniform Network Code.

13.345 This remedy will enable PCWs (and other TPIs providing similar services) to check or obtain MPAN and MPRN numbers for customers seeking to switch supplier and to check other information provided by these customers against that held on the databases. Use of the data by PCWs (and other TPIs providing similar services) should be strictly limited to these purposes. Any charge for access to the data should be based on the incremental cost to the database administrators of providing this access

## Knowledge/Skills

No specific knowledge or skills required to consider this modification.

## 5 Solution

This enabling modification is proposing to grant the relevant permissions to allow PCWs/TPIs access to domestic consumer data through amending UNC section V to include a requirement on the PCWs/TPIs to enter into a confidentiality and service agreements with the Transporters on terms no less onerous than those of TPD Section V5, but including clauses detailing the data and permitted purpose, and clauses to include enforcement of the confidentiality agreement.

The data to be included is equivalent to the service provided in SPAA Schedule 23, section 6.4 and is to be obtained specifically for the purpose of enabling a change of supplier event in response to a specific request from a consumer.

The confidentiality and service agreements are not to be included in the UNC solution; however, in order to provide confidence that the arrangements protect the providers of the data the following elements will be included. To ensure compliance of the data in accordance with the Data Protection Act, PCWs/TPIs will be subject to, but not limited, to the following principles which will be solidified in a forthcoming service build:

- Legitimate justification will be required by PCWs/TPIs for accessing this information. This will be subject to confidentiality agreements between PCWs/TPIs and the Gas Transporters, and a contract with the Transporters' Agency for the provision of the service.
- PCWs/TPIs access to data will be subject to organisational validations and conditions, as set out in legal contracts between PCWs/TPIs and the Gas Transporters. The relevant section of the UNC will be amended to include the definition of PCWs/TPIs.
  - o PCWs/TPIs are recommended to be part of the Ofgem Confidence Code for faster processing of organisational validations.
- The data provided is confidential information and is therefore only permitted to be accessed by PCWs/TPIs (subject to organisational validations) where consent has been obtained from the relevant consumer, through a clear statement of consent on the PCWs/TPIs website, which will be required to be actively triggered by a consumer.
- Consumer consent and data accessed by PCWs/TPIs will be held by PCWs/TPIs or no longer than reasonably required to comply with relevant legislation.
- The Transporter has the right to audit PCWs/TPIs, without notice, to ensure data is being used solely, with consumer consent, for the purposes of facilitating change of supplier activity.
- The Transporter has the right to request PCWs/TPIs to produce evidence of the following information, but are not limited to only this information: consumer consent, data obtained, time periods data was obtained for, switching evidence (if switch took place), and data retention policies.

- Where any suspected misuse comes to the attention of the Transporters, including via a third party or an audit or security investigation, then the Transporter has the right (after appropriate investigation) to cancel provisions of access to data to the PCW/TPI.
- If any of the evidence requested by the Transporter, as specified within the UNC and legal contracts, is not provided within a reasonable timeframe, then the Transporter has the right to immediately cancel provisions of access to data to the PCW/TPI.

In order to provide the industry with transparency of the use of this data, an annual report will be provided detailing the PCW/TPI market participants who are permitted to access this data.

This modification, once implemented, will grant the necessary permissions for the creation of a commercial service which will provide access to domestic consumer data only for the sole purpose of aiding in faster supplier switching.

An explanatory note to the final Order can be viewed here:

<https://assets.publishing.service.gov.uk/media/58513dc9e5274a13070000ac/energy-market-ECOES-DES-order-explanatory-note.pdf>

The final Order can be viewed here:

<https://assets.publishing.service.gov.uk/media/58513da4e5274a13030000b0/energy-market-ECOES-DES-order-2016.pdf>

## 6 Impacts & Other Considerations

### Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

This requirement may be transitional until the SCR is implemented where PCWs/TPIs may be able to access the data from the new Central Registration Service (CRS).

### Consumer Impacts

Criteria	Extent of Impact
Which Consumer groups are affected?	<ul style="list-style-type: none"> <li>• Domestic Consumers</li> <li>• Small non-domestic Consumers*</li> <li>• Large non-domestic Consumers*</li> <li>• Very Large Consumers*</li> </ul> <p><i>*The proposed technical solution, which utilises DES, would make non domestic data available/accessible to PCWs/TPIs.</i></p>

<p>What costs or benefits will pass through to them?</p>	<ul style="list-style-type: none"> <li>• It is not anticipated that any costs will be passed through to Consumers. Services facilitated by this modification will be provided using bilateral arrangements between the Transporter Agency and PCWs/TPIs.</li> <li>• This modification facilitates the provision of data that should allow Domestic consumers to be better engaged and able to understand and choose between the range of options available to them through PCWs/TPIs services, offered both online and by telephone.</li> </ul>
<p>When will these costs/benefits impact upon consumers?</p>	<ul style="list-style-type: none"> <li>• Immediately following the implementation of the services provided by Transporters, on a date to be provided.</li> </ul>
<p>Are there any other Consumer Impacts?</p>	<ul style="list-style-type: none"> <li>• In the main, TPIs are not currently representing domestic customers but this is anticipated to change in the future.</li> <li>• There is a risk the services facilitated by this modification could increase the risk of erroneous transfers due to the misuse or misunderstanding of the data provided.</li> <li>• Consumer data could be misused as it may be made available to unregulated operators, this may have a greater impact vulnerable consumers.</li> </ul>

## Cross Code Impacts

The requirements as set out by the CMA Report, also apply to electricity. Therefore, code administrative changes will also be made to the Master Registration Agreement (MRA).

## EU Code Impacts

None.

## Central Systems Impacts

There are no impacts on Central Systems based on the proposed DES technical solution option. Service provision will need to be provided – post NEXUS implementation.

## Workgroup Impact Assessment

Some workgroup participants noted that while this modification is enabling, it allows the release of data through bi-lateral arrangements outside of Code governance and scrutiny and with no oversight by UNC parties. The information provided through such a service would be to parties that meet a definition of a party (PCW/TPI) that can request such information and they may or may not be registered or licenced. This creates a risk that once the information is released there will be few controls on its use and this could lead to damaging consequences for UNC parties.

Overall it was recognised that PCWs/TPIs could play an important role in engaging with domestic consumers to improve competition in the domestic retail market. Some participants wished to see the proposal extended to cover the I&C sector in order for benefits to be maximised.

Some participants were concerned that the system solution facilitated by this modification (DES), could put UNC parties at risk of being in breach of the Data Protection Act. Others felt that non-UNC parties would be given information which exceeds that required to provide for domestic consumers. It was felt that the system solution should be amended so that only relevant data is provided to PCWs/TPIs i.e. domestic consumer data.

## Workgroup Supplemental Report

The Workgroup is requested to consider and report on the following issues raised by the Authority within the send back letter:

- 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;
- 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;
- what provisions are in place to ensure consumer consent will be positive informed consent; and
- 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.

User Pays	
Classification of the modification as User Pays, or not, and the justification for such classification.	No User Pays service would be created or amended by implementation of this modification and it is not, therefore, classified as a User Pays Modification.
Identification of Users of the service, the proposed split of the recovery between Gas Transporters and Users for User Pays costs and the justification for such view.	N/A
Proposed charge(s) for application of User Pays charges to Shippers.	N/A
Proposed charge for inclusion in the Agency Charging Statement (ACS) – to be completed upon receipt of a cost estimate from Xoserve.	N/A

## 7 Relevant Objectives

### Impact of the modification on the Relevant Objectives:

Relevant Objective	Identified impact
a) Efficient and economic operation of the pipe-line system.	None

b) Coordinated, efficient and economic operation of (i) the combined pipe-line system, and/ or (ii) the pipe-line system of one or more other relevant gas transporters.	None
c) Efficient discharge of the licensee's obligations.	None
d) Securing of effective competition: (i) between relevant shippers; (ii) between relevant suppliers; and/or (iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers.	Positive
e) Provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards... are satisfied as respects the availability of gas to their domestic customers.	None
f) Promotion of efficiency in the implementation and administration of the Code.	None
g) Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.	None

This modification furthers relevant objective d) to the extent it removes or mitigates an adverse effect on competition as identified by the CMA in the conclusions of its energy markets investigation.

## 8 Implementation

No implementation timescales are proposed and Transporters would notify a suitable implementation date should the modification be approved.

## 9 Legal Text

Legal Text has been provided by Northern Gas Networks and is included below.

### Text Commentary

The legal text introduces a new permission for the release of protected data. Paragraph TPD V5.5.3(n) describes the person to whom the data can be released (PCWs and TPIs as defined in UNC GTC1), the circumstances of the release (they have permission from the domestic consumer and have entered into appropriate terms) and the data items are set out in SPAA Schedule 23: 6.4.

TPD V5.5.3(n) also obligates the Transporters to publish an annual list of persons who have entered into agreements for this data.

The definitions in UNC GTC1 are consistent with those in the Competition and Markets Authority draft Order on the Transporters to create these permissions and a corresponding service.

## Text

### TRANSPORTATION PRINCIPAL DOCUMENT

#### SECTION V – GENERAL

(m) to a person appointed.....contained within SPAA; and

*Add new sub-paragraph of 5.5.3(n), as follows:*

~~(n) — Transporters are authorised to disclose such data as is set out within SPAA Schedule 23: 6.4 to a Price Comparison Website or Third Party Intermediary where they have received consent from the domestic consumer and where they have entered into a confidentiality and commercial agreements (on terms no less onerous than those in paragraph 5) and reasonable access conditions.~~

~~(i) The Transporters shall, by 31 March each year, publish a report detailing the market participants subject to 5.18.1.~~

~~“Price Comparison Website” (PCW) shall mean an internet-based price comparison service or other internet based TPI that provides comparisons between, and/or access to, personalized quotes for retail energy to domestic customers, and may carry out, on behalf of the domestic customer an instruction to change the domestic customer’s retail energy supplier, tariff or both.~~

~~“Third Party Intermediary” (TPI) shall mean an organisation or individual acting as a third party intermediary between a domestic customer and a retail energy supplier.~~

(n) The Transporters are authorised to disclose such data as is set out within SPAA Schedule 23: Section 6.4 to a Price Comparison Website or Third Party Intermediary where they have received consent from the domestic consumer and where they have entered into confidentiality and service agreements (on terms no less onerous than those in paragraph 5) and reasonable access conditions.

(i) The Transporters’ Agency shall, by 31 March each year, produce a report to identify the service recipients who have signed up to the confidentiality and service agreements;

(ii) “Price Comparison Website” (PCW) shall mean an internet-based price comparison service or other internet based TPI that provides comparisons between, and/or access to, personalised quotes for retail energy to domestic customers, and may carry out, on behalf of the domestic customer an instruction to change the domestic customer’s retail energy supplier, tariff or both;

(iii) “Third Party Intermediary” (TPI) shall mean an organisation or individual acting as a third party intermediary between a domestic customer and a retail energy supplier.

## 10 Consultation

Panel invited representations from interested parties on 19 January 2017. The summaries in the following table are provided for reference on a reasonable endeavours basis only. We recommend that all representations are read in full when considering this Report. Representations are published alongside this Final Modification Report.

Of the 12 representations received 6 supported implementation, 3 offered qualified support, and 3 were not in support. An initial representation was also provided to the Workgroup for consideration during assessment, this has been included in the table below.

Representations were received from the following parties:

Organisation	Response	Relevant Objectives	Key Points
British Gas	Oppose	d - none	<ul style="list-style-type: none"> <li>• Supports the order and the principle of providing industry data to PCWs, to enable more frequent and improved switching journeys. However, consideration needs to be given to how to monitor PCWs' access and usage.</li> <li>• Is concerned that PCW access and usage of DES may not be robustly, monitored, controlled or auditable, which raises concerns the solution is non-compliant with the Data Protection Act and risks breaches of customer data.</li> <li>• Implementation of this modification should only take place after a Privacy Impact Assessment has occurred and the CDSP has implemented adequate monitoring, access and usage system controls.</li> <li>• Is concerned a DPA breach, which will result in a financial fine which will flow back to shippers and their consumers.</li> </ul>
Citizens Advice	Supports	d - positive	<ul style="list-style-type: none"> <li>• Supports the intention of the modification to ease the process of switching using a price comparison service or third party intermediary.</li> <li>• Considers the provisions included in the description of the associated confidentiality and service agreements take sufficient account of the need to protect consumers' data.</li> </ul>
EDF Energy	Qualified Support	d - positive	<ul style="list-style-type: none"> <li>• Supports the intent of the modification to allow PCWs access to Data Enquiry Service (DES) in order to address the weak domestic customer response identified by the CMA.</li> <li>• Concerned about the ability of the Agency to deliver the requirements of the Order (and modification) by putting in place reasonable access requirements that can be robustly monitored to ensure that the information is used appropriately.</li> <li>• Considers it necessary to understand whether Xoserve can deliver the requirements laid out in the legal text. Would welcome understanding in more detail what monitoring arrangements would be put in place for PCWs and how their access would be limited to only domestic data.</li> </ul>

			<ul style="list-style-type: none"> <li>• From 1<sup>st</sup> April, Shippers could be exposed to any costs/liabilities that Xoserve incur because of potentially not having appropriate controls in place to ensure that where access is granted to a PCW they are meeting the reasonable access conditions required.</li> <li>• Agree with the detail of the modification that would provide access to PCWs akin to that offered to a Supplier. Notes that access could also be given to Non-domestic data and potentially significantly more detailed information than PCWs require to enable customer switching</li> </ul>
E.ON	Oppose	d - negative	<ul style="list-style-type: none"> <li>• Support the intentions of the CMA Order to improve the domestic customer switching engagement, recognising that improved switching activity will give the CMA confidence in the market and it will deliver better outcomes for consumers as they will gravitate to more innovative and customer responsive Suppliers.</li> <li>• Is concerned the solution as provided in the modification doesn't meet the terms/conditions of the CMA order on a number of points. It is not fit for purpose and the proposed implementation timescale is flawed.</li> <li>• It places unreasonable risks on Shippers/Suppliers and ultimately customers, and it doesn't address concerns raised by the Information Commissioner's Office.</li> <li>• The Cross-codes Third Party Access Group proposed a way forward that addressed the concerns raised by the CMA, set out a solution that was consulted on and preferred by respondents and was capable of being delivered in a reasonable timeframe that didn't present the same levels of risk to UNC parties as the current solution proposed does.</li> <li>• Does not agree the proposed solution is fit for purpose, therefore the proposed implementation timescale is flawed. Would encourage the Gas Transporters and Xoserve to consider bringing forward the work on the dual fuel API interface with ECOES in a way that delivers this asap.</li> <li>• Parties will be faced with increased CDSP operating costs for Xoserve to develop contractual arrangements and stakeholder management in preparation for any PCWs or TPAs who may request access. Those costs may not be recovered in the event that no PCW comes forward to place an order for the services.</li> <li>• Is concerned that costs will flow from the risks that the</li> </ul>

solutions present. Would prefer that a more robust solution was implemented, which may have a higher cost to the Users, but removes the risks that customers would face from any liabilities imposed should a breach of data protection occur.

- It cannot be guaranteed that the ICO would hold Xoserve free from fault if it was felt that they didn't have sufficient safeguards and/or controls in place to prevent abuse, having granted a PCW or TPI access to the data.

The legal text delivers the ability to grant access to DES to a PCW or TPI for access to domestic only data, however DES cannot currently be restricted in this way, and therefore it cannot deliver the intent of the modification or the CMA order.

- No Privacy Impact Assessment has been provided to the workgroup which addresses how the third-party access and use of the data mitigates any risk to UNC parties from misuse by PCWs or TPIs.
- No consideration has been given to the ICO comments on the Order in relation to the DPA concerns or the future introduction of more robust GDP Regulations that come into force in 2018. This modification introduces new risks on Shippers and their Suppliers from the 1<sup>st</sup> of April and increasingly so from May 2018 (with the introduction of GDP Regulations).
- No consideration was given as to whether the Gas Transporters should retain the risk of the liability from any breach of contract should this modification be implemented before the introduction of FGO arrangements. Since Shippers currently are not required to consent to the access being granted and are unable to apply any levers of control over the contract that is being created it is unreasonable to expect them to assume the risk. Consideration should therefore have been given to this remaining a Transporter Agency activity.
- 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. Considers 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.
Flow Energy	Qualified Support	d - positive	<ul style="list-style-type: none"> <li>• Support the rationale and aspiration of the modification.</li> <li>• Notes there are serious misgivings amongst certain organisations that the proposal is flawed with respect to its perceived weakness or ambiguity around Data Protection.</li> <li>• Has not identified any conclusive reasons to underpin these concerns and would fully expect Ofgem to consider all representations and the points made before making a final determination on this specific proposal.</li> </ul>
Gazprom	Oppose	d - positive	<ul style="list-style-type: none"> <li>• Whilst not a Domestic market participant, they are concerned the solution will provide unfettered access to all industry data (including non-domestic information).</li> <li>• Does not believe that adequate controls and safeguards are being put in place to ensure data is kept secure and is used appropriately and therefore, cannot support the proposed solution as it is not fit for purpose.</li> <li>• Permission should only be granted once a robust solution has been put forward.</li> </ul>
National Grid Gas Distribution	Supports	d - positive	<ul style="list-style-type: none"> <li>• This enabling modification will provide the necessary permissions for Transporters to give (through Xoserve) access to the Data Enquiry Service (DES) to Price Comparison Websites (PCWs) and Third Party Intermediaries.</li> <li>• Will fulfil the Transporters requirements under the Competition and Markets Authority (CMA) Energy Market Investigation (ECOES/DES) Order 2016.</li> </ul>
Northern Gas Networks	Supports	d - positive	<ul style="list-style-type: none"> <li>• Supports the goal of making switching easier for consumers, and feels that the reasonable access conditions specified in the modification regarding the confidentiality and commercial agreements should provide adequate safeguards and a legal framework to protect consumer data from misuse.</li> <li>• Does not foresee lengthy lead-time being required for the implementation because DES is already an active service provided by Xoserve; therefore, the PCW/TPIs only need to sign the appropriate agreements in order to be provided with a DES logon ID.</li> </ul>
NPower	Supports	d - positive	<ul style="list-style-type: none"> <li>• Modification will facilitate consumer engagement and improve the switching process.</li> <li>• Will reduce actual and perceived barriers to switching</li> </ul>

			<p>resulting from erroneous transfers and failed switches.</p> <ul style="list-style-type: none"> <li>• Support the proposed controls to protect customer data that PCWs have access to in the same way that Suppliers are (i.e. to use the data only for particular restricted purposes).</li> <li>• Supports the need for PCWs to be assessed to ensure that they have appropriate organisational and technological processes and procedures in place to keep the data secure.</li> </ul>
Scotia Gas Networks	Supports	d - positive	<ul style="list-style-type: none"> <li>• This enabling modification grants the necessary permissions within the UNC to provide access to the Data Enquiry Service, operated by Xoserve, for PCWs/TPIs, to better facilitate customer switching in line with the Competition and Markets Authority's (CMA) order.</li> <li>• It suitably discharges the obligation on Gas Transporters to make necessary amendments to the UNC as reasonable practicable after the date of the CMA order.</li> <li>• Facilitates a remedy to issues identified by the CMA which have an adverse effect on competition. Specifically, improved consumer confidence in the effectiveness of switching better facilitates competition between suppliers.</li> <li>• Understand the concerns surrounding data protection but are comforted by the principles set out and have confidence that sufficient controls will be incorporated into the eventual service.</li> <li>• The CMA order comes into force on 28 February 2017 therefore implementation of this modification is requested as soon as possible.</li> <li>• As the modification, itself is an enabling modification it does not create any costs. However, the subsequent service will incur an incremental cost to Xoserve as database administrators, and therefore consider that this should be recovered from the PCWs/TPIs, given that they are the beneficiaries of this commercial service.</li> </ul>
SSE	Qualified Support	d - positive	<ul style="list-style-type: none"> <li>• Support the intent of the modification to support the requirement for PCWs / TPIs to be given access to data with the same conditions and in the same manner as is currently the case for Suppliers. This will allow them to check or obtain MPRNs for consumers seeking to switch Supplier and to check other information provided</li> </ul>

			<p>by these consumers.</p> <ul style="list-style-type: none"> <li>• However, has serious concerns that the system solution proposed does not have the required Data Protection security and reporting around the accessing and use of the data for its intended purposes.</li> <li>• The system implemented must have safeguards in place, together with proper audit measures to ensure that customer data is not misused and that only data related to those customer types mentioned within the CMA report can be accessed.</li> <li>• iGT UNC processes may mean permissions through this route will not exist by 28th February which would compromise Xoserve's ability to deliver access for independent Gas Transporter sites (access is for GT and iGT data cannot be separated in the timescales).</li> </ul>
Wales & West Utilities	Supports	d - positive	<ul style="list-style-type: none"> <li>• Achieves the aim of the Competition and Markets Authority (CMA) order, to give PCWs (and other TPIs providing similar services) access upon request to the ECOES and SCOGES databases respectively on reasonable terms and subject to satisfaction of reasonable access conditions.</li> <li>• Is mindful that the provision granted will enable a manual comparison of entered details against those held by the Transporters. It is possible that the absence of an automated solution may limit the extent to which switching is facilitated by this service.</li> <li>• Suggests that a sample of PCWs and TPIs should be engaged, selecting both those who have opted into any resulting service and those who have abstained. The purpose of this engagement is to identify if the access provided addresses the concerns raised by the CMA.</li> <li>• Gas Transporters, who are party to the UNC are required to use their best endeavours to ensure that a modification proposal concerning any necessary amendments to the UNC to reflect the obligation in Article 4.1 and its associated date for implementation in Article 1.2 is approved and implemented as soon as reasonably practicable after the date of the CMA Order.</li> <li>• No lead time required for implementation; however, there may be lead time in providing the access being provided. This lead time would need to be sufficient to agree the confidentiality and service requirements of the proposed solution.</li> <li>• No direct costs expected from this modification as the</li> </ul>

			users of the service pay for any directly attributable costs in the spirit of the FGO model.
Utilities Intermediaries Association (initial representation)	Comments	N/A	<ul style="list-style-type: none"> <li>• Initial Representation supported the intent of the modification in response to the CMA Report and was considered a step in the right direction. However, a number of points were raised for the Workgroup to consider during the assessment.</li> <li>• For the most part a phone line and email address, which allows provision of helpful and clear detail of why a set of data has failed the transfer process and submission of LOA, will suffice.</li> <li>• Neither, availability of ECOES nor SCOGES will help if the data to which is being referred too is not what is required to unlock the issue.</li> <li>• TPIs and PCWs will normally require data for one site at a time unless a Multisite customer is changing supplier.</li> <li>• Full access to the two systems to ensure compliance with the CMA words will be difficult to manage and begs the question why make them fully available. It is considered that some TPIs have already been given access to this data.</li> <li>• The UIA would urge those that while instigating a suitable response to the CMA words and address the needs of the PCW's, to look to providing an answer for the small number of BIG issues, which independent TPIs have to work through.</li> <li>• Putting in place a fast and easy process to deal with those cases via a phone and email contact would be such a benefit to the non-domestic market, both customers and those who support them.</li> <li>• The remaining outlined process encompassed by this modification, of audit and management would be over bearing on those who wanted an answer to the issues with an individual supply point occasionally.</li> <li>• The processes as outlined to control the issues of Data, are designed at keeping the horse in the stable or dealing with it when it is well down the field, both are expensive and require significant amounts of time and effort.</li> <li>• Further exploration of why the CMA think making the two systems available and to help the CMA understand the effect of giving full access rather than site by site access may bring about a different and lower cost</li> </ul>

			outcome.
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Responding parties were also requested to address the following question in their representations.

*Q1: To inform Panel's consideration of self-governance, views are requested as to whether respondents believe that releasing these data items represents a material impact on competition between, or commercial arrangements for, Shippers or Transporters. Please provide evidence to support your response.*

Organisation	Key Points
British Gas	<ul style="list-style-type: none"> <li>Considering the system controls, the probability of DPA non-compliance, and the likely material impact to consumers, this change should be sent to the authority for decision.</li> </ul>
Citizens Advice	<ul style="list-style-type: none"> <li>Recognising that it may not be a literal impact of the permissions granted by this proposal, competition is materially affected as a deliberate and direct consequence and as improving competition is the intended purpose of the modification, it should not be considered self-governance.</li> </ul>
EDF Energy	<ul style="list-style-type: none"> <li>This modification would, intentionally, have a material impact on Consumers and competition within the industry. Therefore, self-governance is not appropriate.</li> </ul>
E.ON	<ul style="list-style-type: none"> <li>The ICO has recently asserted in its comments on the CMA Order that ECOES and DES data is "Personal Data" and subject to the DPA regulations, and the upcoming GDP Regulations. We have set out our concerns around the risks that would flow back to Shippers and Suppliers coming from Xoserve's inability to mitigate the risk to us from the potential misuse of the data, or from inappropriate accessing of non-domestic data that is still considered personal, but that relates to non-domestic businesses. For this reason, the modification does not meet the self-governance criteria.</li> </ul>
Gazprom	<ul style="list-style-type: none"> <li>The solution is not fit for purpose and therefore has the potential to lead to material consumer detriment and to adversely affect wider confidence in the market. Accordingly, any decision on implementation should ultimately lie with Ofgem.</li> </ul>
National Grid Gas Distribution	<ul style="list-style-type: none"> <li>Throughout workgroup discussions an opinion has been expressed by some parties that giving DES access to PCWs and TPIs could potentially lead to Data Protection Act (DPA) compliance issues. Noting that the 'Supplier Community' view within DES gives limited access to data, from a legal perspective it is not clear why the CMA recommendations give rise to a potential DPA breach.</li> <li>Noting the concerns articulated by Shipper Users, concur with the view expressed within the modification that self-governance procedures should not apply.</li> </ul>
Northern Gas Networks	<ul style="list-style-type: none"> <li>The intention of the CMA Order is to further competition by making the switching process easier for consumers. This means that there will be a material impact on Code parties upon implementation of this modification, and so should not be considered self-governance.</li> </ul>
Npower	<ul style="list-style-type: none"> <li>This change will ensure a better journey for consumers, improving the switching process and will facilitate ongoing consumer engagement. In turn this will</li> </ul>

	stimulate competition amongst market participants.
Scotia Gas Networks	<ul style="list-style-type: none"> <li>• Whilst this is an enabling modification, the associated service could create consequential data protection compliance matters which could materially affect both Transporters and Shippers.</li> <li>• Additionally, any increase in the number of customers switching or any change in the customer community's perception of switching (positive or negative) could materially affect competition between Shippers. Therefore, this modification is not suitable for self-governance.</li> </ul>
SSE	<ul style="list-style-type: none"> <li>• Agrees that this modification does not meet the self-governance criteria due to the impact that the service can potentially have on market competition.</li> </ul>
Wales & West Utilities	<ul style="list-style-type: none"> <li>• A modification that solely considers issue of data to a third party should be contractual and under normal business rules, therefore would ordinarily be self-governance. However, in this instance as the provision of information to PCWs and TPIs may facilitate further switching and therefore can be deemed to have a potentially material impact on competition, whilst this is only an enabling modification, the Self Governance Criteria appears not to be met given that the CMA deem this activity should facilitate such switching activity.</li> </ul>

Please note that late submitted representations will not be included or referred to in this Final Modification Report. However, all representations received in response to this consultation (including late submissions) are published in full alongside this Report, and will be taken into account when the UNC Modification Panel makes its assessment and recommendation.

## 11 Panel Discussions

### Discussion

The Panel Chair summarised that Modification 0593 seeks to create provisions in the UNC to permit the release of data to Price Comparison Websites (PCWs) and Third Party Intermediaries (TPIs) to satisfy the Competition and Markets Authority's (CMA) Order issued after their Energy Market Investigation.

Additionally, the release of data would be subject to contractual agreement with Transporters that would include validations undertaken by the Transporter and would be pursuant to data protection principles.

Members considered the representations made noting that, of the 12 representations received, 6 supported implementation, 3 offered qualified support, and 3 were not in support. It was also noted that an initial representation was also provided to the Workgroup for consideration during assessment.

Members noted respondents' concerns about whether there are satisfactory safeguards and access controls to protect consumer data, agreeing that this was a significant matter that had to be resolved as part of the 'applicant validation' process. Parties in support of 0593 believed that it provided appropriate arrangements and, in addition, it satisfies the CMA Order. As a consequence, it would have benefits to switching and, ultimately, improve the competitive market.

Members discussed the apparent difference of opinion between the Information Commissioner and the CMA with respect to consumer data protection in this context. This was seen to be a non-UNC regulatory matter and not soluble in Code. The Proposer clarified that this was only an enabling modification, and

that there was scope to apply the provisions it enables once a clear resolution to the regulatory issue was available. Some Members believed it was inappropriate to proceed with an enabling modification when there were such fundamental questions about data protection, which would need to be resolved but cannot at this time.

### Self-governance

Members considered respondents' views on self-governance. Although this proposal could be said to be a simple 'permissions' modification, meaning it would have minor impacts on consumers, the potential consequences for consumers and the industry of a misuse of data were felt to represent a significant impact on criteria (i) (a) *on existing or future gas consumers*. Members determined that the materiality required that an Authority (Ofgem) decision was appropriate.

### Consideration of the Relevant Objectives

Members agreed that implementation would be expected to further relevant objective *d) Securing of effective competition (between relevant shippers, relevant suppliers and DN operators)* on the grounds that it removes or mitigates an adverse effect on competition as identified by the CMA in its conclusions to the energy markets investigation. It is believed that by providing data directly to such non-Code parties the service provided will improve, leading to more switching with consequential benefits to the competitive marketplace.

### Determinations

Members voted with 4 votes in favour (out of a possible 11), failed to recommend implementation of Modification 0593.

## 12 Recommendations

### Panel Recommendation

Members recommended that Modification 0593 should not be implemented.