

Representation - Draft Modification Report 0593

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

Responses invited by: **5pm on 09 February 2017**

To: enquiries@gasgovernance.co.uk

Representative:	Colette Baldwin
Organisation:	E.ON
Date of Representation:	7 th February 2017
Support or oppose implementation?	Oppose
Relevant Objective:	d) Negative – Given the points raised in our response, we don't support the view that this proposal facilitates competition between Shippers and/or Suppliers. The potential risks that the proposal creates could result in increased costs for customers and those risks are completely outside the control of the same Shippers and Suppliers.

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

We support the intentions of the CMA Order to improve the domestic customer switching engagement, we recognise that improve 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.

However, the solution as provided in the modification doesn't meet the terms of the CMA order fully. It places unreasonable risks on shippers/suppliers and ultimately customers, and it doesn't address concerns raised by the Information Commissioner's Office.

We believe that the TPAG (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.

We have set out our full concerns in the attached document.

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

We do not believe the proposed solution is fit for purpose as it doesn't meet all the conditions of the CMA Order, and therefore the proposed implementation timescale is flawed. We would encourage the GTs and Xoserve to consider bringing forward the work on the dual fuel API interface with ECOES in a way that delivers this asap.

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

The costs of a DES login are met by the User accessing the system. We will also face increased CDSP operating costs for Xoserve to develop contractual arrangements and stakeholder management in preparation for any PCWs or TPIs 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.

What we are unable to identify are the costs flowing from the risks that the solutions present. We would prefer that a more robust solution were 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.

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

No, 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.

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

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.

Please see the attached document for a detailed response.

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 we don't believe that the modification meets the self-governance criteria.

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.*

Yes – please see attached documents for more detailed comments.

The legal text mirrors part of the CMA Order, but the modification doesn't address how access is limited to only those sites captured by the order. It doesn't address data privacy and security concerns raised in the workgroup by multiple parties.

No PIA (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.

The TPAG (cross code work-group) consulted on the development of an API solution which was the preference of many parties, particularly PCWs and TPIs, and no consideration was made of whether this was a better mechanism to deliver the intent of the order rather than that which is proposed.

No consideration was given as to whether the Gas Transporters should retain the risk of the liability from any breach of contract should this mod be implemented before the introduction of FGO arrangements brought in under UNC Mod 565. Since we currently are not required to consent to the access being granted and since we are unable to apply any levers of control over the contract that is being created it is unreasonable to expect us to assume the risk. Consideration should therefore have been given to this remaining an agency activity.

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

Please see the attached document