

**Sent By Email**

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7<sup>th</sup> April 2016

Dear Sir/Madam,

## **MEC Response to the CMA Energy Market Investigation Provisional Decisions**

Thank you for the opportunity to respond to the CMA's Provisional Decision on Remedies published 17<sup>th</sup> March 2016. The Master Registration Agreement (MRA) Executive Committee (MEC) notes the content of the publication.

MEC provided a response to the CMA's 'Notice of Provisional Findings' on 4<sup>th</sup> August 2015<sup>1</sup>, and on the 28<sup>th</sup> July 2015, clarifying the role of the committee, the MRA Service Company Limited (MRASCo), and Gemserv Limited in meeting the requirements of the MRA. In this response, MEC stated that the majority of the Notice of Provisional Findings focused on aspects of the market that do not form part of the remit of the MRA or MRASCo.

The response also provided an outline of the commercial arrangements between Gemserv Limited and MRASCo Limited, the Electricity Central Online Enquiry Service (ECOES) and the MRA code modification process in order to assist the CMA with its investigation.

This response addresses aspects of the Provisional Decision on Remedies that can be categorised in the following summary:

1. Licensing of code administration;
2. The introduction of a strategic direction by Ofgem
3. New powers for Code Administrators and Ofgem with regard to modification processes; and
4. Price Comparison Website (PCW) access to ECOES.

### **1. Licensing of code administration**

MEC agrees with the CMA's position that industry codes are critical to the effective functioning of the market and ensures that its Code Administrator (Gemserv Limited) supports the MRA in an efficient manner.

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<sup>1</sup> [https://assets.digital.cabinet-office.gov.uk/media/55e6bd4eed915d06a100001a/MRA\\_Service\\_Company\\_Ltd\\_resp\\_to\\_PFs.pdf](https://assets.digital.cabinet-office.gov.uk/media/55e6bd4eed915d06a100001a/MRA_Service_Company_Ltd_resp_to_PFs.pdf)

Introducing licensing of code administration could provide greater consistency between code administration roles across the industry. Introducing licences could assist in driving efficiencies and streamlining services, particularly when coupled with additional reporting introduced under Ofgem's recent Code Governance Review (Phase 3) publication<sup>2</sup>. MEC has long been supportive of cross-code working as introduced formally under Principle 13 of the Code Administration Code of Practice (CACoP)<sup>3</sup>. Under a licensing regime, MEC notes that this approach may become more widely adopted across all code related delivery bodies.

However, MEC would like to draw the CMA's attention to the measurability of some of the outputs designed to be achieved as a result of the licensing remedy. Namely, 'a clear and helpful website' and 'effective performance of the critical friend role'<sup>4</sup>. It would be difficult to quantify these outputs, which could result in a code administrator being non-conformant with some of the licence conditions.

Furthermore, MEC requests clarity on the impact of introducing a code administrator licence on the existing contract between Gemserv Limited and MRASCo. The licensable activities should allow the ability to procure external professional support, such as legal advisers and accountants, where MEC agree that it is required.

MRASCo also requires the freedom to publish a tender for Code Administrator services at any point, to ensure management of the MRA remains cost effective for all MRA parties.

## **2. Introduction of a strategic direction by Ofgem**

MEC notes that the CMA recommends that Ofgem develop a strategic direction, covering a broad overview of high-level policy changes over a reasonable timeline, under the scope of a consultative board<sup>5</sup>. The expertise of code panels and code administrators would be valuable for Ofgem to utilise when developing the strategic direction. A strategic work plan already forms part of the service provision for the MRA and is conducted regularly. MEC is happy to continue to share its work plan with Ofgem as an observer of the MRA Executive Committee, to assist in developing the processes and approach with regard to the strategic direction, work plans, and consultative board aspects of the CMA's Provisional Decision.

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<sup>2</sup> <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-3-final-proposals-consultation-licence-modifications>

<sup>3</sup> <https://www.ofgem.gov.uk/licences-codes-and-standards/codes/industry-codes-work/code-administration-code-practice-cacop>

<sup>4</sup> CMA, 17th March 2016. *Energy market investigation*. Paragraph 10.434 p729

<sup>5</sup> CMA, 17th March 2016. *Energy market investigation*. Paragraph 10.404 p.721

### 3. New powers for Code Administrators and Ofgem with regard to modification processes

While MEC notes the additional powers proposed for Ofgem to raise directly code modifications, MEC would like to emphasise that industry consultation is vital. There may be consequential impacts of raising code modifications, which Code Parties are likely to be more able to identify due to the nature of their role. Code Parties may be able to draw upon different experience within their organisations to identify operational impacts, compared to regulatory impacts. While this may be satisfied through the consultative board, MEC suggests it is necessary to consider the end-to-end consultative approach to ensure Code Party engagement through various methods, e.g. written and oral consultation processes.

### 4. Price Comparison Website (PCW) access to ECOES

MEC notes the recommendations to extend the scope of access to ECOES data via “order to Gemserv...to give PCWs access upon request to the ECOES...database”. MEC would like to clarify that due to current governance arrangements, Gemserv does not have the authority to grant access to ECOES, and this responsibility lies with MEC. MEC discharges service delivery to Gemserv under the role of Code Administrator, and it is under MRA Agreed Procedure 15<sup>6</sup> which confirms that, whilst the ECOES Central Administration Service (CAS) is responsible for processing applications (currently Gemserv), it is MEC that is responsible for granting access.

Since address and metering point data is likely to be considered as personal data by the Information Commissioner’s Office (ICO)<sup>7</sup>, appropriate privacy and security procedures must be upheld by the parties that already have access. In order to ensure that these procedures are upheld, MEC places a high importance on ensuring that access is considered for MRA parties using accurate and reasonable application criteria, terms and conditions via contractual access agreements and provisions held within the ECOES Access Agreements to enable MRASCo to conduct audits when required.

MEC has commissioned a working group to be convened in order to review third party access to ECOES. This review will consider:

- The benefits of granting access to ECOES data for third parties, and if there are specific types of third parties that need to be considered (such as Price Comparison Websites);
- The technical options to enable third parties to access ECOES data;
- Security considerations, such as the necessary Data Protection Act (DPA) and Information Commissioner’s Office requirements of enabling access for third parties;
- Current robustness of the system to ensure that the system can cope with the risk of exponential increases in traffic/usage, particularly as usage may increase, along with the costs to accommodate the increased usage;
- Any increased liabilities and risks on MRASCo or MRA Parties; and
- The method to enforce compliance on third parties, particularly around security.

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<sup>6</sup> <https://www.mrasco.com/mra-products/mra-agreed-procedures>

<sup>7</sup> CMA, 17th March 2016. *Energy market investigation*. Paragraph 6.182 p.380

Further to these review considerations, MEC acknowledges the CMA Order that PCWs should have the option to obtain access to ECOES.

The capabilities of ECOES extend far beyond the storage of data. ECOES acts as a central point of communication for industry participants using the Data Transfer Catalogue<sup>8</sup> for purposes such as monitoring the quality of industry data, performing bulk data updates, validating prepayment transaction allocations and providing reporting to industry participants. Therefore access to ECOES needs to be carefully managed in order to safeguard against the sensitivities of the system and complex industry processes that rely on its availability, and to ensure that access rights are applied according to the Permitted Use obligations.

MEC notes that the CMA propose the creation of an “Ofgem-controlled database of ‘disengaged customers’”<sup>9</sup>. MEC believes that the use of ECOES (given its functions and data), could provide a very effective means to deliver the CMA remedy. ECOES is already operational, it transacts millions of data items every day, it is scalable and secure, and critically, industry participants already have access. Moreover, it provides a very cost effective solution with a user-friendly interface, a proven capability and resilience. Whilst this is likely to be a matter for Ofgem to consider in terms of implementation of the remedy, it would nonetheless be worth noting and the CMA may wish to suggest to Ofgem that it considers existing market infrastructure solutions (where they exist) in order to minimise cost and reduce implementation risks and timescales.

MEC is very willing to discuss with the CMA and Ofgem how this assessment may be undertaken and can provide expert advice in this area.

If you would like clarification on any of the points raised in this letter or if there is anything further you would like MEC to consider, please contact [MRAShelpdesk@gemserv.com](mailto:MRAShelpdesk@gemserv.com) or call 020 7090 1029.

Best regards,

Alex Travell

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<sup>8</sup> The Data Transfer Catalogue contains a suite of Data Flows, which facilitate the exchange of information across the industry and enable effective interface between industry participants. Please refer to the DTC website for more information: <https://dtc.mrasco.com/default.aspx>

<sup>9</sup> CMA, 17<sup>th</sup> March 2016. *Energy market investigation*. Paragraph 106 p. 24