

ENERGY MARKET INVESTIGATION

DRAFT ORDER – CONSULTATION

The Energy Market Investigation (ECOES/DES) Order 2016

Background

1. On 26 June 2014, the Gas and Electricity Markets Authority, in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the Act) (as provided for by section 36A of the Gas Act 1986 (GA86) and section 43 of the Electricity Act 1989 (EA89)), made an ordinary reference to the Chair of the Competition and Markets Authority (CMA) for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for an investigation into the supply and acquisition of energy in Great Britain.¹
2. The CMA investigated the matters referred to it pursuant to sections 131 and 133 of the Act and concluded (a) in accordance with section 134(1) of the Act that there are features of the markets for the supply and acquisition of energy in Great Britain which, either alone or in combination, prevent, restrict or distort competition; and (b) in accordance with section 134(2) of the Act, that there are adverse effects on competition (AEC). The CMA published its findings in a report under section 136 of the Act entitled *Energy market investigation: Final report* published on 24 June 2016 (the Report).
3. One of the AECs identified by the CMA was the Domestic Weak Customer Response AEC. The features identified by the CMA as giving rise to the Domestic Weak Customer AEC were the following:
 - (a) Customers have limited awareness of, and interest in, their ability to switch energy supplier, which arises in particular from the following fundamental characteristics of the domestic retail gas and electricity supply markets: (i) the homogeneous nature of gas and electricity; and (ii) the role of traditional meters and bills.
 - (b) Customers face actual and perceived barriers to accessing and assessing information arising, in particular, from the following aspects of the

¹ [Energy market investigation terms of reference.](#)

domestic retail gas and electricity markets: (i) the complex information provided in bills and the structure of tariffs; and (ii) a lack of confidence in, and access to, PCWs by certain categories of customers, including the less well-educated and the less well-off.

- (c) Customers face actual and perceived barriers to switching, such as where they experience erroneous transfers which have the potential to cause material detriment to those who suffer from them.
4. The CMA considered, in accordance with section 134(4) of the Act,
 - (a) whether action should be taken by it for the purpose of remedying, mitigating or preventing the AECs or any detrimental effect on consumers;
 - (b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the AECs or any detrimental effect on consumers; and
 - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
 5. In the Report, the CMA decided upon a package of remedies to remedy, mitigate or prevent the AECs and/or associated detriment that it found.
 6. The CMA decided to implement the ECOES and DES remedies to remedy, in part, the Domestic Weak Customer Response AEC. The ECOES remedy will impose (through an Order) (a) an obligation on MRA Service Company Limited (MRASCo) to give PCWs access to the Electricity Central Online Enquiry Services (ECOES) upon request, and subject to satisfaction of reasonable access conditions; and (b) an obligation on Elexon Limited (Elexon), electricity suppliers and electricity distributors not to take any action that would prevent MRASCo from giving such parties access to ECOES on reasonable access conditions. The DES remedy will impose (through an Order) (a) an obligation on Xoserve to give PCWs access to the gas Data Enquiry Service (DES) upon request, and subject to satisfaction of reasonable access conditions; and (b) an obligation on gas transporters not to take any action that would prevent Xoserve from giving such parties access to DES on reasonable access conditions.
 7. The draft Explanatory Note accompanying the Draft Order provides an explanation of how the Draft Order is expected to operate.

The Order

Reference and power

The CMA makes this Order in performance of its duty under section 138 of the Act for the purpose of remedying, mitigating or preventing the adverse effects on

competition and any detrimental effects on consumers so far as they have resulted, or may be expected to result, from the adverse effects on competition as identified in the Report. The CMA makes this Order in exercise of the powers conferred by sections 86(1) to (5) and 87 (each applicable by virtue of section 164), 161(1), (3) and (4) and paragraphs 10, 17 to 19, 21 and 22 of Schedule 8 to the Act.

Part 1

General and Interpretation

1. Title, commencement and scope

- 1.1. This Order may be cited as 'The Energy Market Investigation (ECOES/DES) Order 2016'.
- 1.2. This Order shall come into force on [day after the order] December 2016 except Articles 3.1, 3.2, 4.1 and 4.2, which shall come into force on 28 February 2017.
- 1.3. This Order applies to MRASCo, Elexon, Retail Electricity Suppliers, Electricity Distributors, Xoserve and Gas Transporters.
- 1.4. This Order shall continue in force until such time as it is varied or revoked under the Act. The variation or revocation of this Order shall not affect the validity or enforceability of any rights or obligations that arose prior to such variation or revocation.

2. Interpretation

- 2.1. In this Order:

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| Act | means the Enterprise Act 2002. |
| DES | means the Data Enquiry Service operated by Xoserve. |
| DES Remedy Compliance Statement | means a statement in the form prescribed in Schedule 2 to be submitted by Xoserve and Gas Transporters to the CMA pursuant to Articles 5.3, 5.4 and 5.6. |
| Domestic Customer | has the meaning given to it in the Electricity Supply Licence or the Gas Supply Licence (as applicable). |

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| ECOES | means the Electricity Central Online Enquiry Service operated by MRASCo. |
| ECOES Access Agreement | means an agreement between MRASCo and any person that sets out conditions, rights and obligations in relation to that person's access to ECOES. |
| ECOES Remedy Compliance Statement | means a statement in the form prescribed in Schedule 1 to be submitted by MRASCo, Elexon, Retail Electricity Suppliers and Electricity Distributors to the CMA pursuant to Articles 5.3 to 5.6. |
| Electricity Distributor | means any person who is authorised by an Electricity Distribution Licence to distribute electricity. |
| Electricity Distribution Licence | means an electricity distribution licence granted or treated as granted under section 6(1)(c) of the Electricity Act 1989 that authorises an Electricity Distributor to distribute electricity. |
| Electricity Supply Licence | means an electricity supply licence granted or treated as granted under section 6(1)(d) of the Electricity Act 1989. |
| Elexon | means Elexon Limited (registered no.3782949). |
| Gas Supply Licence | means a gas supply licence granted or treated as granted under section 7A(1) of the Gas Act 1986. |
| Gas Transporter Licence | means a gas transporter licence granted or treated as granted under section 7 of the Gas Act 1986. |
| Gas Transporter | means any person who is authorised by a Gas Transporter Licence to transport gas. |
| MRA | means the Master Registration Agreement, including any subsidiary documentation, which, amongst other things, sets out terms for the provision of metering point administration services (ie the main data source for ECOES), and procedures in relation to the change of supplier to any premise/metering point, and as published on the MRASCo website and updated from time to time. |
| MRASCo | means MRA Service Company Limited, or its successor from time to time, being the company that |

administers the MRA, operates ECOES, and enters into any ECOES Access Agreement.

MRASCo Board

means the board of directors of MRASCo.

PCW

means a price comparison website, 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.

Retail Electricity Supplier

means any person authorised to supply electricity by virtue of an Electricity Supply Licence.

Retail Energy Supplier

means any person authorised to supply gas by virtue of a Gas Supply Licence, and any person authorised to supply electricity by virtue of an Electricity Supply Licence.

Retail Gas Supplier

means any person authorised to supply gas by virtue of a Gas Supply Licence.

TPI

means an organisation or individual acting as a third party intermediary between a Domestic Customer and a Retail Energy Supplier.

UNC

means the Uniform Network Code, including any subsidiary documentation, which governs, amongst other things, the legal and contractual framework to supply and transport gas, and as published on the website of the Joint Office of Gas Transporters and updated from time to time.

Xoserve

means Xoserve Limited (registered no. 5046877), being the company that provides transportation transactional services on behalf of all the major Gas Transporters, and the operator of DES.

2.2. In this Order any reference to:

(a) 'month' means calendar month;

- (b) **'oral'** or **'orally'** relates to the transmission of information or the completion of a process made orally including in person or by telephone;
 - (c) a **'person'** includes any individual, firm, partnership, body corporate or association;
 - (d) **'written'** or **'in writing'** includes the transmission of information or the conclusion of a process made on, by, or through electronic communications or by a postal service; and
 - (e) a government department or non-departmental public body or organisation or person or place or thing includes a reference to its successor in title.
- 2.3. The headings used in this Order are for convenience and have no legal effect.
- 2.4. References to any statute, statutory provisions or licence conditions shall be construed as references to that statute, statutory provision or licence condition as amended, re-enacted or modified, whether by statute or otherwise.
- 2.5. The Interpretation Act 1978 applies to this Order except where words and expressions are expressly defined.

Part 2

Access to ECOES

- 3. Obligation to give access to ECOES**
- 3.1. MRASCo must give PCWs access to ECOES upon written request and subject to the satisfaction of reasonable access conditions.
- 3.2. Elexon, Retail Electricity Suppliers and Electricity Distributors must not take any action that would prevent MRASCo from giving access to ECOES upon written request and subject to the satisfaction of reasonable access conditions.

Part 3

Access to DES

- 4. Obligation to give access to DES**

- 4.1. Xoserve must give PCWs access to DES upon written request, and subject to the satisfaction of reasonable access conditions.
- 4.2. Gas Transporters must not take any action that would prevent Xoserve from giving access to DES upon written request and subject to the satisfaction of reasonable access conditions.
- 4.3. Gas Transporters must 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 is approved and implemented as soon as reasonably practicable after the date of this Order.

Part 4

Monitoring and compliance

5. Monitoring and compliance

- 5.1. MRASCo, Elexon, Retail Electricity Suppliers and Electricity Distributors must each submit an ECOES Remedy Compliance Statement to the CMA.
- 5.2. Xoserve and Gas Transporters must each submit a DES Remedy Compliance Statement to the CMA containing a statement that Xoserve and Gas Transporters have complied with the terms of the Order.
- 5.3. The first ECOES Remedy Compliance Statement and DES Remedy Compliance Statement must be submitted to the CMA by 31 March 2017.
- 5.4. Each subsequent ECOES Remedy Compliance Statement and DES Remedy Compliance Statement is to be submitted to the CMA by 31 March in each year.
- 5.5. MRASCo must ensure that any ECOES Remedy Compliance Statement is signed by any member of the MRASCo Board.
- 5.6. Elexon, Retail Electricity Suppliers, Electricity Distributors, Xoserve and Gas Transporters must ensure that any ECOES Remedy Compliance Statement or DES Remedy Compliance Statement (as applicable) is signed by the Chief Executive Officer, the Managing Director or any director of the board.

6. Directions by the CMA as to compliance

- 6.1. The CMA may give directions falling within Article 6.2 to:
 - (a) a person specified in the directions; or

(b) a holder for the time being of an office so specified in any body of persons whether incorporated or unincorporated.

6.2. Directions fall within this paragraph if they are directions:

(a) to take such actions as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, this Order; or

(b) to do, or refrain from doing, anything so specified or described which the person might be required by this Order to do or refrain from doing.

6.3. In Article 6.2 above, 'actions' includes steps to introduce and maintain arrangements to ensure that any director, employee or agent of MRASCo, Elexon, Retail Electricity Suppliers, Electricity Distributors, Xoserve or Gas Transporters carries out, or secures compliance with, this Order.

6.4. The CMA may vary or revoke any directions so given.

7. Supply of information to the CMA

7.1. Any person to whom this Order applies is required to provide any information and documents required by the CMA for the purposes of enabling the CMA to monitor the carrying out of this Order or any provisions of this Order and/or to review the effectiveness of the operation of this Order, or any provision of this Order.

7.2. Any person to whom this Order applies may be required by the CMA to keep and produce those records specified in writing by the CMA that relate to the operation of any provisions of this Order.

7.3. Any person to whom this Order applies and whom the CMA believes to have information which may be relevant to the monitoring or the review of the operation of any provisions of this Order may be required by the CMA to attend and provide such information in person.

7.4. Subject always to Part 9 of the Act, the CMA may publish any information or documents that it has received in connection with the monitoring or the review of this Order or any provisions of this Order for the purpose of assisting the CMA in the discharge of its functions under or in connection with this Order.

Schedule 1 – Template ECOES Remedy Compliance Statement

ECOES Remedy Compliance Statement

[I], [insert name], confirm [on behalf of [insert name]] that during the period commencing on [insert date] and ending on [insert date], [I] [have] complied with The Energy Market Investigation (ECOES/DES) Order 2016.

Signature:

Name:

Title:

Schedule 2 – Template DES Remedy Compliance Statement

DES Remedy Compliance Statement

[I], [insert name], confirm [on behalf of [insert name]] that during the period commencing on [insert date] and ending on [insert date], [I] [have] complied with The Energy Market Investigation (ECOES/DES) Order 2016.

Signature:

Name:

Title: