

ENERGY MARKET INVESTIGATION

Draft Explanatory Note

Energy Market Investigation (ECOES/DES) Order 2016

This note is not a part of the Order

Introduction

1. The Competition and Markets Authority (CMA) published its findings in a report under section 136 of the Enterprise Act 2002 (the Act) entitled *Energy market investigation: Final Report* on 24 June 2016 (the Report).
2. The Report set out the CMA's findings that there are features of the markets for the domestic retail supply of gas and electricity in Great Britain which, alone or in combination give rise to an adverse effects on competition (AECs).
3. The CMA decided on a package of remedies to be implemented by it in order to remedy, mitigate or prevent the AECs (and associated detriment) that it found.
4. The Energy Market Investigation (ECOES/DES) Order 2016 dated [x] December 2016 (the Order) gives effect to two of these remedies, namely the ECOES Remedy and the DES Remedy.
5. The ECOES Remedy involves (a) a requirement on the MRA Service Company Limited (MRASCo) to give PCWs (as defined below) access to the Electricity Central Online Enquiry Services (ECOES) upon written request, and subject to the satisfaction of reasonable access conditions; and (b) a requirement 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.
6. The DES Remedy involves (a) a requirement on Xoserve to give PCWs access to the gas Data Enquiry Service (DES)¹ upon written request, and

¹ The Report included a remedy concerning access to the Single Centralised On-Line Gas Enquiry Service (the SCOGES remedy). We note that SCOGES has been superseded by the Data Enquiry Service (DES). This change has been reflected in the Order and the Explanatory Note.

subject to satisfaction of reasonable access conditions; and (b) a requirement on Gas Transporters not to take any action that would prevent Xoserve from giving such parties access to DES on reasonable access conditions.

7. Nothing in this Explanatory Note is legally binding.
8. Terms defined in the Order have the same meaning in the Explanatory Note. In the event of a conflict between this Explanatory Note and any provision of the Order, the Order shall prevail.

Possible consequences for non-compliance

9. Section 167 of the Act places a duty on any person to whom the Order applies to comply with it. Any person who suffers loss or damage due to a breach of this duty may bring an action.
10. The CMA has power under the Order to give directions, including directions to a person in their capacity as an office holder, for the purpose of carrying out, or ensuring compliance with, the Order.
11. Section 167 of the Act also provides that the CMA can seek to enforce the Order by civil proceedings for an injunction or for any other appropriate relief or remedy.

Review of the Order

12. The CMA has a duty under section 162 of the Act to monitor the operation of the Order. This includes a duty to consider, from time to time, whether the Order should be varied or revoked in the light of a change of circumstances. Any party subject to the Order may apply for a variation or cancellation of all or part of the Order on the basis of a change of circumstances, or recommend that the CMA reviews the need for the Order or part of it.
13. GEMA has a general duty, under section 34 of the Gas Act 1986 and section 47 of the Electricity Act 1989, to monitor activities connected with regulated energy activities (including electricity supply, electricity distribution and gas transportation) in a manner which it best considers it will best further its principal objective to protect the interests of existing and future consumers. It similarly has a duty to provide advice, information and assistance to the CMA (on GEMA's own initiative or where expressly requested).
14. In view of these duties, the CMA expects GEMA to consider, from time to time, the need for the Order, and inform the CMA of any change of circumstance which in its view might require the termination or variation of the Order.

Structure of the Order

15. The Order is divided into 4 Parts and has 2 Schedules:
- (a) Part 1 contains general provisions, which include specifying when the Order comes into force, the scope of the Order and the definitions that are used throughout the Order (and which are also used in this Explanatory Note).
 - (b) Part 2 contains (a) an obligation on MRASCo to give PCWs access to ECOES, and specifies details on how and when access should be given; and (b) an obligation on Elexon, electricity suppliers and Electricity Distributors not to take any action that would prevent MRASCo from giving PCWs access to ECOES.
 - (c) Part 3 contains (a) an obligation on Xoserve to give PCWs access to DES, and specifies details on how and when access should be given; and (b) and obligation on Gas Transporters not to take any action that would prevent Xoserve from giving PCWs access to DES.
 - (d) Part 4 contains provisions for monitoring compliance, including provisions allowing the CMA to give directions as to compliance with the Order and to require the supply of information for the purposes of monitoring compliance with the Order and reviewing its operation.
 - (e) Schedule 1 contains a Template ECOES Remedy Compliance Statement.
 - (f) Schedule 2 contains a Template DES Remedy Compliance Statement.

Part 1 – General and Interpretation

16. Article 1 provides that the Order applies to MRASCo, Elexon, electricity suppliers, Electricity Distributors, Xoserve and Gas Transporters. Article 1 also provides that the Order shall come into force on [day after the order] December 2016, except for Articles 3.1, 3.2, 4.1 and 4.2 (regarding the obligations on the parties who are the subject of the Order), which shall come into force on 28 February 2017.
17. We have received submissions that the implementation of the ECOES and DES Remedies will require some technical issues to be addressed, including the development and testing of an Application Programme Interface (API) automated solution to give PCWs access in real time (ie while a customer is looking to run a comparison). We have also received submissions that Xoserve's principal commitment is to deliver and implement Project Nexus, which is expected to be completed by 1 June 2017 and this should remain the

priority for Xoserve. However, the ECOES and DES Remedies have been designed so as to be consistent with the Report, and therefore give PCWs access to the data held in ECOES and DES through the utilisation of existing services and infrastructure provided by Gemserv and Xoserve, respectively, upon written request and subject to the satisfaction of reasonable access conditions (see below).

18. In this regard, the ECOES and DES Remedies require MRASCo, Elexon, electricity suppliers, Electricity Distributors, Xoserve and Gas Transporters to give access to PCWs subject to 'reasonable access conditions', which would include giving access with the same conditions and in the same manner as is currently the case for suppliers.
19. For instance, PCWs could be given access to the data through the establishment of ECOES and DES user accounts that would allow them access to the data through the ECOES² and Xoserve³ websites. We recognise that this approach may not meet the full aspirations of PCWs (who may wish to have a form of 'real-time' access to ECOES and DES). However, the Order does not prevent any of the relevant parties from developing and implementing any technical developments required to improve PCWs' access to ECOES and DES in due course. This consideration has been reflected in the choice of 28 February 2017 as the implementation date for the ECOES and DES Remedies.
20. Article 2 includes definitions of various terms used in the Order, and in a limited number of instances cross-refers to terms defined in the Electricity Distribution Licence, Electricity Supply Licence, or Gas Supply Licence. To the extent possible, the terms used in the Order have been defined to have the same meaning as in the Electricity Distribution Licence, Electricity Supply Licence and the Gas Supply Licence (as applicable). For the avoidance of doubt, when a word or expression has been expressly defined in the Order, the definition set out in the Order shall prevail over other definitions.

Part 2 – Access to ECOES

21. The aim of Article 3 of the Order is to impose an obligation on MRASCo to give PCWs access to ECOES upon written request, and subject to the satisfaction of reasonable access conditions. Elexon, electricity suppliers and Electricity Distributors will be under an obligation not to take any action that

² www.ecoes.co.uk.

³ www.xoserve-search.com.

would prevent MRASCo from giving such parties access to ECOES on reasonable access conditions.

22. These obligations will allow PCWs to access to some relevant information about a Domestic Customer seeking to switch electricity supplier, and to check the information provided by such customer against ECOES during a switching process. Therefore, these obligations will benefit electricity suppliers and Domestic Customers as they will mainly reduce erroneous switches where the switching is conducted through PCWs, and will improve Domestic Customers' perceptions of the switching process.

PCWs

23. The term PCW has been defined in the Order as a price comparison website, internet-based price comparison service or other internet-based third party intermediary (TPI) that provides comparisons between, and access to, personalised quotes for retail energy to Domestic Customers, and carries out, on behalf of the Domestic Customer an instruction to change the Domestic Customer's supplier, tariff, or both.
24. For the avoidance of any doubt, the definition of PCW will include online PCWs that operate telephone based comparison services using the same underlying switching platform as their online switching service. Pursuant to the Report, the definition of PCW is limited to PCWs operating in the domestic retail markets.⁴
25. Based on this definition, we expect that the Order will benefit emerging companies that are involved in identifying best deals for Domestic Customers and completing the switching on their behalf. For the avoidance of doubt, access to ECOES should not be limited to PCWs accredited by Ofgem's Confidence Code.⁵

Access to ECOES

26. Access to ECOES is currently governed under the Master Registration Agreement (MRA), a multi-party agreement between (i) MRASCo, (ii) Elexon, (iii) Electricity Distributors, and (iv) electricity suppliers. MRASCo is the company created to administer the MRA. MRASCo is responsible for giving access to ECOES and entering into access agreements with third parties.

⁴ The Order does not preclude the development of a future access service for PCWs operating in the non-domestic markets.

⁵ The Confidence Code is a Code of Practice that governs PCWs.

27. The MRA includes a provision⁶ that confers the MRA Executive Committee the power to agree and issue procedures in relation to the establishment, operation and maintenance of ECOES, including the power to agree and issue procedures concerning access to ECOES. The rules for granting access to ECOES are set out in an MRA Agreed Procedure (MAP) entitled 'Electricity Central Online Enquiry Service MAP15' (MAP15), which is available on the MRASCo website.⁷
28. Under MAP15, access to ECOES is currently available to electricity suppliers, Electricity Distributors, electricity suppliers' agents (eg meter operators and data collectors), certain non-domestic customers with multiple MPANs, and certain government bodies (ie the National Consumer Council and the Department of Work and Pensions).
29. Electricity suppliers currently access ECOES mainly when dealing with switching requests. Where a Domestic Customer wishes to switch electricity supplier, the new supplier must be provided with certain information from ECOES concerning the supply point (including the MPAN and address of supply). There are instances where the Domestic Customer does not know the required information, or provides inaccurate information to the supplier. ECOES enables electricity suppliers to obtain the relevant information in respect of a specific supply point, or to check the accuracy of the information provided by a Domestic Customer prior to completing the switching.
30. The identification of information concerning electricity supply points is facilitated through a search tool made available in ECOES' website that allows electricity suppliers to search by using key data items such as the MPAN, Meter Serial Number or postcode provided by the Domestic Customer, and cross-check any of these items against ECOES. For instance, if the Domestic Customer provides a postcode only, the search tool will allow the supplier to access to the relevant information (eg the MPAN and Meter Serial Number) linked to that postcode.
31. Other third parties may be granted access to ECOES subject to compliance with the rules set out in the MAP15. In order to obtain access, these third-parties must:
 - (a) complete an application form;

⁶ Clause 31.9.

⁷ [Electricity Central Online Enquiry Service MAP15](#).

- (b) agree to the proposed terms of access and costs and charges associated with the access;
 - (c) obtain approval from the MRA Executive Committee;
 - (d) sign an ECOES Access Agreement with MRASCo; and
 - (e) comply with data protection and information security requirements, which involves being audited at least annually.
32. Upon receipt of the completed application form (stage (a) above), the Central Administration Service (CAS)⁸ assesses whether the third party meets the primary requirements, ie the third party (i) satisfies a legal entitlement to access ECOES; (ii) fulfils a licence obligation on MRA parties; or (iii) provides a clear benefit to MRA parties. An applicant that meets at least one of these requirements will be likely to proceed to stage (b) above and will be likely to obtain approval from the MRA Executive Committee to access ECOES. The Report identified that PCWs were generally unlikely to fulfil any of the primary requirements and, therefore, there was a risk that they would be refused access to ECOES.
33. To ensure PCWs can access to ECOES, the Order requires MRASCo to give PCWs access to ECOES upon written request, and subject to the satisfaction of reasonable access conditions. This implies that MRASCo will need to take any necessary steps to allow PCWs access to ECOES, subject to the satisfaction of reasonable access conditions. To the extent that the rules for granting access to ECOES are set out in the MRA and MAP15 (see above), compliance with the Order may require raising amendments to the MRA or issuing new procedures concerning access to ECOES or amending the MAP15.
34. To ensure that the effectiveness of the Order is not adversely affected by any future amendments to the MRA, the Order also requires the other parties to the MRA agreement, ie Elexon, electricity suppliers and Electricity Distributors not to take any action that would prevent MRASCo from giving PCWs access to ECOES on reasonable access conditions.
35. The Order sets out two requirements concerning the access to ECOES by PCWs. In particular, access to ECOES should be given (a) upon written request; and (b) on reasonable terms and subject to the satisfaction of reasonable access conditions. We expect that, when assessing compliance with the requirement to give PCWs access on reasonable terms and subject

⁸ The CAS provides one point of contact for all parties for all matters related to ECOES.

to the satisfaction of reasonable access conditions, MRASCo will consider issues such as:

- (i) compliance with data protection legislation;
 - (ii) the confidential nature of the information;
 - (iii) restrictions concerning the use of ECOES by PCWs (eg requirements to use the data only for the purposes of customer switching);
 - (iv) the need to put in place appropriate audits to ensure that PCWs have appropriate organisational and technological processes and procedures in place to keep the data secure; and
 - (v) the need to ensure that any fees charged to PCWs are justified by incremental costs, and that any incremental costs incurred in providing PCWs access to ECOES are justified.
36. We expect that access to ECOES will be fit for purpose, will have the practical impact of improving the customer switching experience through PCWs, and will not have any negative impact on the functioning of PCWs' price comparison services.

Part 3 – Access to DES

37. The aim of Article 4 of the Order is to impose an obligation on Xoserve to give PCWs access to DES⁹ upon written request, and subject to satisfaction of reasonable access conditions. Gas transporters will be under an obligation not to take any action that would prevent Xoserve from giving such parties access to DES on reasonable access conditions.
38. These obligations will allow PCWs to access to some relevant information about a Domestic Customer seeking to switch gas supplier, and to check the information provided by such customer against DES during a switching process. Therefore, these obligations will benefit gas suppliers and Domestic Customers as they will mainly reduce erroneous switches where the switching is conducted through PCWs, and will improve Domestic Customers' perceptions of the switching process.

⁹ For the avoidance of any doubt, access to DES means access to the data held in the DES.

Access to DES

39. Gas transporters are required to provide a 'Supply Point Information Service' under Standard Special Condition A31 of the gas transporters' licence. This requirement resulted in the implementation of DES, ie a national online data repository of all gas meter points within Great Britain, covering all gas transporters.
40. Xoserve is responsible for giving access to DES on behalf of Gas Transporters. However, access to DES by third parties (such as PCWs) is subject to the Uniform Network Code (UNC) and instruction from Gas Transporters. Therefore, Xoserve is not permitted to give such third parties access to DES without appropriate permissions or approvals which, in turn, require a modification to the UNC.
41. The Report recognised that DES is managed by Xoserve¹⁰ but said that the DES Remedy would be implemented though an order on Gas Transporters.¹¹ To the extent that Xoserve is directly involved in giving access to DES and to ensure the effectiveness of the DES Remedy, the Order also requires Xoserve to give PCWs access to DES upon written request, and subject to satisfaction of reasonable access conditions.
42. The Order also imposes obligations on Gas Transporters not to take any action that would prevent Xoserve from giving PCWs access to DES on reasonable access conditions, and to use their best endeavours to ensure that a modification proposal concerning any necessary amendments to the UNC is approved and implemented as soon as reasonably practicable after the date of the Order. In order to give effect to this obligation, the Gas Transporters have already raised UNC Modification Proposal 593 'Provision of access to Domestic Customer data for Price Comparison Websites and Third Party Intermediaries' (UNC MOD 593). In due course, the Gas Transporters are expected to issue an instruction to Xoserve to develop and implement the service.
43. For the avoidance of any doubt, the definition of Gas Transporters contained in the Order does not include gas transporters that do not have any involvement in distribution activities that facilitate retail (eg National Grid Gas Transmission).
44. The Order sets out two requirements concerning the access to DES by PCWs. In particular, it requires that access to DES is given (a) upon written

¹⁰ Paragraph 13.315.

¹¹ Paragraph 13.349.

request; and (b) on reasonable terms and subject to the satisfaction of reasonable access conditions. The same interpretation of identical requirements concerning access to ECOES (see paragraph 35 above) will apply to the requirements concerning access to DES.

Part 4 – Monitoring and compliance

45. Article 5 of the Order sets out the detailed compliance reporting requirements in relation to Parts 2 and 3 of the Order.
46. Articles 5.1 and 5.2 require MRASCo, Elexon, electricity suppliers, Electricity Distributors, Xoserve and Gas Transporters to submit compliance statements to the CMA in the format specified in Schedules 1 and 2 to the Order (as applicable). The first compliance statement must be submitted by 31 March 2017. Each subsequent compliance statement must be submitted to the CMA by 31 March in each year.
47. These compliance statements are required to assist the CMA in complying with their statutory duty to monitor compliance with the Order.
48. UNC MOD 593 places an obligation on Gas Transporters to publish an annual report of parties who take the service. This report will also be used for monitoring purposes.
49. The CMA expects that PCWs seeking access to ECOES or DES will inform the CMA of breach of the Order.
50. Article 6 provides that the CMA may give directions as to compliance with the Order.
51. Article 7 provides for any person to whom this Order applies to provide information required by the CMA to allow it to monitor and review compliance with and operation of the Order.