

By email to: david.fowlis@cma.gsi.gov.uk and energymarket@cma.gsi.gov.uk

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10 November 2016

Dear David,

ELEXON's comments on The Energy Market Investigation (ECOES/DES) Order 2016 and the Draft Explanatory Note for the Order

We welcome the opportunity to comment on the CMA's initial consultation on the Draft Order and accompanying Draft Explanatory Note. As you are aware, ELEXON is the company responsible for managing and delivering the end-to-end electricity Settlement arrangements set out in the Balancing and Settlement Code (BSC). In many areas, we discharge this responsibility through our contractual arrangements with BSC Agents to deliver the actual data, systems and processes. In addition, we are responsible for progressing and implementing BSC Modification Proposals in accordance with the procedures set out in the BSC.

The views in this response are ELEXON's and do not seek to represent those of the BSC Panel or BSC Parties.

Obligations and compliance requirements

We understand that, the Order (as drafted) will oblige ELEXON, as a signatory to the MRA, not to take any action that would prevent the MRA Service Company (MRASCo) from giving Price Comparison Websites (PCWs) access to ECOES on reasonable access conditions.

We also acknowledge the requirement to submit annual compliance statements to the CMA in the format specified in the Order (with the first compliance statement to be submitted by 31 March 2017).

We understand that the Order will be made pursuant to the CMA's statutory powers and that the Order is effectively secondary legislation. Consequently it will be binding on ELEXON and will take precedence over any current or future BSC provisions. We note, therefore, that ELEXON (and other parties to the MRA) can comply with this order insofar that this does not conflict with obligations and protections founded in equivalent or primary legislation (e.g. privacy legislation or protections for vulnerable customers).

Access Conditions and Breach

We note the CMA's expectation that the Order will benefit emerging companies that are involved in identifying best deals for Domestic Customers and completing the switching process on their behalf. We therefore understand why the CMA feels it appropriate that access to ECOES should not be limited to PCWs accredited by Ofgem's Confidence Code. We strongly believe, however, that access to ECOES must be carefully managed. This is because ECOES contains information which is sensitive to privacy and data protection legislation.

Consequently, we welcome the clarification in the explanatory note regarding those areas that MRASCo is expected to consider when assessing PCW compliance with access conditions.

Interactions with Ofgem's Switching Programme

Finally, we agree it is important (as stated in the explanatory note) that the Gas and Electricity Markets Authority (GEMA) considers, from time to time, the need for the Order and informs the CMA of any change of circumstance which might require the termination or variation of the Order. In particular, we note the work being progressed by Ofgem in relation to its [Switching Programme](#) and the implementation of a central registration service. (See [Ofgem confirmation of DCC's role in developing a Central Registration Service](#)). We believe that this order will need to be terminated or varied once ECOES ceases to be the de facto central registration system.

We would be happy to discuss our response and will continue to support the CMA in its work.

Yours sincerely,

Mark Bygraves
CEO, ELEXON Ltd