

ENERGY MARKET INVESTIGATION

Summary of responses to the consultations on the Draft Energy Market Investigation (ECOES/DES) Order 2016 and associated Draft Explanatory Note

Introduction

1. On 18 October 2016, the Competition and Markets Authority (CMA) consulted on a draft order (the Draft Order) and a draft explanatory note (the Draft Explanatory Note) for the implementation of the remedies set out in the *Energy Market Investigation: Final report* (the Report).¹
2. In the course of this consultation, the CMA received 18 submissions relating to the Draft Order and the Draft Explanatory Note. Non-confidential versions of the responses received are available on the CMA's webpages.² This paper sets out the main changes which have been made to the Draft Order as a result of those submissions and also gives reasons why certain suggested changes were not made. Minor changes (such as correction of typographical and spelling errors, clarifications included in the Explanatory Note, and other consequential changes) are not discussed in this paper. References to specific Articles in this paper refer to the final version of the order published on the same date as this paper (the Order), rather than to any earlier drafts. Capitalised terms in this paper have the same meaning as defined in the Order, unless otherwise specified below.
3. The main comments received in response to the consultation were grouped around four main issues:
 - (a) the time period for implementation of the obligation to give PCWs access to the ECOES/DES data pursuant to Articles 3.1 and 4.1;
 - (b) the scope of the access to the ECOES/DES data;
 - (c) clarification on the Gas Transporters that will be subject to a specific obligation; and

¹ [Energy market investigation: Final report.](#)

² [Energy market investigation case page.](#)

- (d) the compliance statement and monitoring arrangements specified in Article 5 of the Draft Order (Monitoring and compliance).

The time period for implementation of the obligation to give PCWs access to the ECOES/DES data

4. The Draft Order, in Article 1.2, required MRASCo and Xoserve to give PCWs access to ECOES/DES data by 28 February 2017.
5. Some respondents to the formal consultation on the Draft Order said that the proposed implementation date of 28 February 2017 would not allow sufficient time for the development and implementation of an Application Programme Interface (API) solution, which would give PCWs access to the ECOES/DES data in real time (ie while a customer is looking to run a comparison). Therefore, in such respondents' view, the Draft Order would not fully deliver PCWs' requirements for an automated solution. Some of these respondents suggested that the Draft Order should build in an initial implementation phase, with the potential for a subsequent service solution, once Project Nexus has been delivered and any outstanding requirements have been tested via use of the initial service.
6. However, the CMA notes that the ECOES and DES Remedies have been designed so as to be consistent with the Report, which envisages PCWs to be given access to the data held in ECOES and DES through the utilisation of existing services and infrastructure provided by Gemserv and Xoserve, respectively,³ upon written request and subject to the satisfaction of reasonable access conditions. 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 ECOES and Xoserve websites. Accordingly, the CMA considers that it is not necessary for an API solution to be developed in order to comply with the Order as regards ECOES or DES, and therefore the choice of 28 February 2017 remains appropriate.
7. The CMA recognises that this approach may not meet the full aspirations of PCWs (who may wish to have a form of automated/'real-time' access to ECOES and DES through an API). 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.

³ Paragraphs 13.316 and 13.317.

8. The CMA supports the industry to continue to develop its proposals to provide PCWs with real time access to ECOES and DES data through an API solution, subject to compliance with data protection and other relevant legislation. The CMA recognises that an API solution would allow PCWs to access a wider range of data during their engagement with the customer so that the customer can pick the right details to switch in an efficient way. Therefore, the CMA recognises that an API solution could be a powerful tool to help prevent erroneous transfers and to avoid delayed and abandoned switches. The CMA would encourage PCWs and suppliers to work together to make the most of this opportunity to collect and validate information from the customer and to promote an effective switching experience for customers.
9. The CMA notes PCWs' concerns around the potential provision of separate gas and electricity API services as this would be inefficient from a PCW perspective. The CMA encourages the industry to work together to identify an optimal solution which may involve providing a service (or services) that provide combined gas and electricity data.

The scope of access to the ECOES/DES data

10. The Report provided for the Order to give access to the ECOES/DES data to PCWs (and other TPIs offering similar services).⁴
11. The term PCW was defined in the Draft Order as:

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 facilitate, on behalf of the Domestic Customer, a change of Retail Energy Supplier, Tariff, or both.
12. Some respondents requested that access to the ECOES/DES data should be limited to Ofgem's Confidence Code accredited PCWs. These respondents submitted that anyone with the ability to build a website or publish a telephone number could claim to fall within the definition of PCW and, therefore, access the data. They also submitted that restricting access to accredited PCWs would facilitate managing the access to consumer data. One respondent requested that data companies should also have access to ECOES/DES for onward supply to market participants and PCWs.

⁴ Paragraph 13.349.

13. As is clear from the Report, the main aim of the Order is to reduce erroneous switches where the switching is conducted through PCWs, and to improve domestic customers' perceptions of the switching process. This is why the Order restricts access to ECOES/DES to PCWs (or other TPIs offering similar services). The CMA is also of the view that access to ECOES/DES data should benefit not only customers seeking to switch supplier via Ofgem-accredited PCWs, but also customers seeking to switch supplier through non-accredited PCWs and emerging online companies that are involved in identifying the best deal for customers and completing the switching on their behalf. The CMA has received no evidence on this issue that would justify a special reason to depart from the Report.
14. In light of the above, the CMA has not amended the definition of PCW contained in the Draft Order to reflect this suggested amendment.

Clarification on the Gas Transporters that will be subject to a specific obligation

15. The Order, in Article 4.3, requires Gas Transporters to use their best endeavours to ensure 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 reasonable practicable after the date of the Order.
16. One party has questioned the precise scope of this obligation and, in particular, whether gas transporters who are not a party to the UNC on the commencement date of the Order, should be caught by the obligation concerning the UNC. The CMA has taken this issue into account and agrees that that the obligation in Article 4.3 should only apply to gas transporters who are a party to the UNC on the commencement date of the Order. This comment has been addressed in Article 4.3 of the Order.

The compliance statement and monitoring arrangements

17. Articles 5.1 to 5.4 of the Draft Order contained an obligation on MRASCo, Elexon, Retail Electricity Suppliers, Electricity Distributors, Xoserve and Gas Transporters to provide the CMA with an initial compliance statement and subsequent annual compliance statements.
18. A number of respondents to the formal consultation requested that only the addressees of the 'positive' obligation to give access to ECOES/DES (ie MRASCo and Xoserve) should be required to submit compliance statements. In the view of these respondents the obligation on the other parties (ie Elexon, Retail Electricity Suppliers, Electricity Distributors, and Gas Transporters) to submit compliance statements is unnecessary for the following reasons:

- (a) The requirements to provide access to ECOES and DES will be embedded into the MRA and the UNC. Therefore, these governance arrangements should provide an adequate safeguard against any party taking any action that would prevent MRASCo or Xoserve from giving PCWs access to ECOES/DES;
 - (b) PCWs would be incentivised to inform the CMA if they are unreasonably refused access to ECOES/DES; and
 - (c) The UNC modification proposal proposes to place an obligation on Gas Transporters to publish an annual report to parties who use the DES service and that report could be used for monitoring purposes.
19. The CMA is of the view that, in light of the alternative mechanisms available to monitor compliance with the obligation applying to Elexon, Retail Electricity Suppliers, Electricity Distributors and Gas Transporters, it is appropriate and proportionate to limit the requirement to submit compliance statements to MRASCo and Xoserve. Therefore, the CMA has decided to modify Articles 5.1, 5.2 and 5.6 of the Draft Order to address these comments.