

UNC Panel Chair, IGT UNC Panel Chair,
UNC Panel, IGT UNC Panel,
gas transporters, gas shippers
and other interested parties

Phone: 020 7901 3860
Email: Priya.sinha@ofgem.gov.uk

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Dear Alex and Steve,

Decision to send back Uniform Network Code (UNC) 593 (UNC593) and Independent Gas Transporters (IGT) UNC 095 (IGT095): 'Provision of access to Domestic Consumer data for Price Comparison Websites and Third Party Intermediaries'

We have considered the issues raised by the modification proposals and the Final Modification Reports (FMRs), dated 16 February 2017 for UNC593 and 23 February 2017 for IGT095. We have also taken into account the responses to the industry consultation summarised in the FMRs and published in full on the Joint Office and IGT UNC websites.¹ We have decided we cannot make a decision on these modification proposals based on the information provided in the FMRs.

We are therefore directing that the reports are revised and resubmitted, to address the issues set out below.

Background

The modifications seek to create the necessary permissions for GTs and IGTs to disclose protected information to Price Comparison Websites (PCWs) and Third Party Intermediaries (TPIs). Specifically, the modifications seek to:

- Define PCWs and TPIs to whom data can be disclosed.
- Define the data items that can be accessed as being those described in Schedule 23, para 6.4 of the SPAA. This includes MPRN, address, as well as technical information around the installed meter and the site characteristics.
- Require that data would be accessed by PCWs and TPIs via the Data Enquiry Service (DES).
- Permit data to be disclosed to a PCW or TPI where it has obtained the permission of the domestic customer, the PCW or TPI has entered into a confidentiality agreement with GTs and IGTs, and for UNC593 only, where the PCW or TPI has also entered into a service agreement.

The modifications include a reference to reasonable access conditions, although we are not clear how this should be interpreted. The modifications also require the annual publication

¹ UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.co.uk and on the IGT UNC website: www.igt-unc.co.uk

of a list of persons who have entered into the relevant agreements to be able to access the data.

The release of data to PCWs is required to satisfy an Order (the Order) made by the Competition and Markets Authority (CMA).² The intention of this Order is that data is released to PCWs from 28 February subject to reasonable access conditions being met.³ In sending back UNC593 and IGT095 for further consideration, we recognise that the timescales envisaged in the Order will not be met. We note that other requirements of the proposed solution, specifically the service agreement between Xoserve and PCWs and TPIs has not been developed so that data would not have been practically available from this date. We will notify the CMA of our decision and the reasons for it.

Reasons for our decision

We note the concerns expressed by many respondents to the consultations on UNC593 and IGT095 and at Panel discussions around how the requirements of the Order would be met in practice. Parties noted concerns around the use of DES and the ability to monitor access to data for auditing purposes. Parties were also unclear on how the requirements of the Data Protection Act (DPA) would be met more broadly to protect consumers' information and who had responsibilities and liabilities following implementation of Xoserve's Funding, Governance and Ownership (FGO) changes from April 2017 and the General Data Protection Regulation (GDPR) from May 2018.

We also note that both the UNC Panel and the IGT UNC Panel did not recommend that the Authority approve these proposals and that concerns were raised by a wide range of parties including GTs, IGTs and shippers.

To give us the information that we need on the likely impact of UNC593 and IGT095 we are sending the proposals back so that stakeholders can provide a more informed set of views on the modifications and their practical effect.

In doing so, our expectation is that the concerns raised by stakeholders should be further explored by work group(s). We would welcome an assessment of the issues relevant to the DPA using the Privacy Impact Assessment (PIA) framework. Any PIA should be developed in consultation with stakeholders and presented to the UNC and IGT UNC Panels as well as Ofgem with the FMRs. We recommend that the work groups(s) engages with the Information Commissioners Office (ICO) to test its thinking on the modification proposals and any PIA that is developed.

This will allow parties to the UNC and IGT UNC to better understand the implications of the modification and any mitigations that may be necessary to prevent data from being disclosed otherwise than in accordance with the DPA.

In sending the modifications back we would also welcome further assessment of the following specific issues:

- whether shippers and suppliers are data controllers in this context and the implications of this for data disclosure as well as any mitigating actions that should be taken,

² The Energy Markets Investigation (ECOES/DES) Order 2016 <https://assets.publishing.service.gov.uk/media/58513da4e5274a1303000b0/energy-market-ECOES-DES-order-2016.pdf>

³ We note the CMA's expectation, described in the explanatory notes to the Order <https://assets.publishing.service.gov.uk/media/58513dc9e5274a13070000ac/energy-market-ECOES-DES-order-explanatory-note.pdf>. In paragraph 33, which also applies in relation to DES, the CMA notes that, when assessing compliance with the requirement to give PCWs access on reasonable terms and subject to the satisfaction of reasonable access conditions, consideration should be given to compliance with data protection legislation as well as the confidential nature of this information and any access needs to be balanced with safeguards to ensure that personal data is kept secure and used appropriately.

- how PCWs and TPIs will have their access to data restricted (contractually or otherwise), including for access to non-domestic supply point data which is not permitted by the proposed modifications,
- what provisions are in place to ensure consumer consent will be positive informed consent, and
- any implications and mitigating actions that should be taken in the context of the changes to Xoserve's governance and funding arrangements as a result of FGO and the forthcoming implementation of the GDPR.

We note that the scope of the modifications is broader than the Order. The modifications permit data to be disclosed to domestic, non-internet based TPIs. This is not required by the Order. It is not clear from the FMRs that this was the intention of the modifications. We would welcome clarification that the intention of the modifications is to capture disclosure to parties not specified by the Order.

While we would welcome an assessment of the proposals using a PIA framework, we are not intending to make a legal assessment of whether any submitted PIA meets DPA requirements. We consider that it is for those parties captured by the DPA to ensure compliance. However, we will take into account views from consultation respondents (including the ICO) and Panel members on any PIA and whether they have any remaining concerns with how data is expected to be disclosed. We will take these into account when considering modification proposals against the relevant objectives of the UNC and IGT UNC as well as our principle objective and relevant statutory duties.

Direction to UNC Panel and IGT UNC Panel

In accordance with paragraph 9.3.8 of the UNC – Modification Rules, we direct that FMR for UNC593 should be revised to address the points above, and resubmitted as soon as is practicable.

In accordance with Part L, clause 26 of the IGT UNC – Modification Rules, we direct that FMR for IGT095 should also be revised to address the points above, and resubmitted as soon as is practicable.

Yours sincerely,

Priya Sinha
Associate Partner Business Consumers & TPI