

Modification proposal:	Uniform Network Code (UNC) 0565/0565A/0565B: 'Central Data Service Provider – General framework and obligations'		
Decision:	The Authority ¹ directs that modification UNC565A be made ²		
Target audience:	UNC Panel, Parties to the UNC and other interested parties		
Date of publication:	19 January 2017	Implementation date:	1 April 2017

Background

Xoserve was established by the Gas Transporters to provide a range of services to support the operation of the GB gas industry. These include billing, managing the booking of capacity, running the gas settlement systems and managing the change of supplier process.

In 2011 we opened a review of Xoserve's funding, governance and ownership (FGO) arrangements to ensure they would be fit for purpose, and provide the required responsiveness and flexibility in funding, in the context of future industry changes.³ In October 2013 we announced our decision that Xoserve would continue in its role as the Central Data Service Provider (CDSP) for the gas industry and a full co-operative governance model should be established to allow Xoserve's users to participate in its decision making process and to directly fund the delivery of services.⁴

In February 2014 we consulted on the legal and regulatory framework to establish new arrangements for Xoserve in its role as the CDSP in order to implement our October 2013 decision.⁵ This was followed in December 2015 by an informal consultation seeking views on our proposals to amend the Gas Transporters Licence to reflect proposed changes to Xoserve's obligations and contracts.⁶ In response the industry began a programme of work to deliver the first phase of the FGO programme, which included putting in place arrangements to allow shippers and IGTs to attend Xoserve contract and change management meetings during 2016/17 and to participate in the annual business plan and budget process in respect of the budget to be implemented from April 2017.

In April 2016 we confirmed that the new arrangements should be delivered by progressing changes to the UNC and by licence changes that would require Gas Transporters to deliver the new arrangements by 31 March 2017.⁷ In December 2016, following discussion with the industry over the previous year, we published our decision to amend the Gas Transporters Licence to include Standard Special Condition (SSC) A15A, and to make related consequential changes.⁸ SSC A15A sets out broad areas to be reflected in the UNC to enable parties to jointly participate in Xoserve's governance and funding.

¹ References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

² This document is notice of the reasons for this decision as required by section 38A of the Gas Act 1986.

³ [Open letter consultation: Review of Xoserve, Ofgem, September 2011](#)

⁴ [Xoserve - decision in relation to new funding, governance and ownership arrangements for the gas transporters' central agent, October 2013](#)

⁵ [Xoserve – consultation on the legal and regulatory framework to establish new arrangements for the gas central service provider, February 2014.](#)

⁶ [Informal consultation on changes to Standard Special Condition A15 \(Agency\) of the Gas Transporters Licence, December 2015](#)

⁷ [Xoserve - Decision on legal and regulatory framework to establish new governance and funding arrangements for the gas central service provider, April 2016](#)

⁸ [Decision on new Standard Special Condition A15A \(Central Data Service Provider\), modification of SSC A15 \(Agency\) and other consequential modifications to the Gas Transporter licence, December 2016.](#)

The modification proposal

UNC565 and the alternative modifications, UNC565A and UNC565B, propose to amend the UNC to establish provisions relating to the appointment, functions and ongoing operation of the CDSP, the Data Services Contract (DSC), the basis on which DSC Committees are established and provisions in relation to the UK Link system.⁹

The proposed DSC forms the bilateral contract between the CDSP and shippers and transporters, and comprises the Data Services Agreement, the DSC Terms and Conditions and the CDSP Service Documents. The DSC binds DSC parties to take and pay for CDSP Services from the CDSP in accordance with the CDSP Service Documents, which in turn comprise the Budget and Charging Methodology; CDSP Services Description; Change Management Procedures; Contract Management Arrangements; Credit Policy; Third Party and Additional Services Policy; Transitional Arrangements Document; and the UK Link Manual.

The modifications are exactly the same, with the exception of the arrangements for representation on the DSC Committees, as discussed below.

Industry consultation

The Final Modification Report (FMR) notes that 17 representations were received. Of these:

- UNC565: 3 supported implementation, 4 offered qualified support, 9 were not in support and 1 was neutral.
- UNC565A: 11 supported implementation, 1 offered qualified support, 4 were not in support and 1 was neutral.
- UNC565B: 7 supported implementation, 1 offered qualified support, 8 were not in support and 1 was neutral.

Of the representations received the FMR notes that 12 expressed a preference for UNC565A, 4 expressed a preference for UNC565B and 1 remained neutral (i.e. no preference expressed/and/or a preference was not expressed for either modification over the other).

UNC Panel¹⁰ recommendation

At its meeting on 15 December 2016, the UNC Panel recommended UNC565, UNC565A and UNC565B were each capable of being implemented but did not express a majority preference as to which proposal should be implemented.

Our decision

We have considered the issues raised by the modification proposal and the FMR dated 15 December 2016. We have considered and taken into account the responses to the industry consultation on the modification proposals which are attached to the FMR and the recommendation of the UNC Panel.¹¹

⁹ Further changes to the UNC are proposed by UNC604 to ensure that the arrangements proposed under UNC565 continue to be effective upon the implementation of Project Nexus. See UNC604 'Central Data Services Provider – Arrangements following implementation of Project Nexus', <http://www.gasgovernance.co.uk/0604>

¹⁰ The UNC Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules.

¹¹ The Final Modification Report, UNC565, UNC565A, UNC565B and industry representations can be viewed on the Joint Office of Gas Transporters website at <http://www.gasgovernance.co.uk/0565>

We have concluded that:

- implementation of UNC565, UNC565A or UNC565B would *better* facilitate the achievement of the relevant objectives of the UNC;
- of the alternatives, UNC565A would *best* facilitate those relevant objectives; and,
- directing that UNC565A be made is consistent with our principal objective and statutory duties.¹²

Reasons for our decision

We consider that UNC565A will better facilitate UNC relevant objectives (c), (d) and (f) than the alternative proposals and has a neutral impact on the other relevant objectives.

(c) so far as is consistent with sub-paragraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence

Standard Special Condition (SSC) A15A of the Gas Transporters Licence¹³ requires the appointment of the CDSP by 1 April 2017. SSC A15A sets out the minimum obligations of the licensee with respect to the appointment and the ongoing operation of the CDSP. It requires the Gas Transporters to raise and progress modifications to the UNC to include joint obligations on the users of Xoserve's services to govern and fund it.¹⁴

UNC565 and its alternatives propose changes to the UNC to give effect to these new licence obligations. We consider that, overall in relation to this objective, UNC565 and its alternatives should provide a broadly equal appropriate basis to allow the CDSP's users to participate in its decision making process and to directly fund the delivery of services. This is because the modifications are the same, with the exception of DSC Committee representation which is most relevant to the objective discussed below. While we recognise that, as with any code arrangements, these may evolve over time, we consider that UNC565, UNC565A and UNC565B all better meet this relevant objective, by seeking to reflect these licence requirements within the UNC from 1 April 2017.

(d) the securing of effective competition

Under the current arrangements, Xoserve is managed and funded by the Gas Transporters through their price control framework and shippers are charged for the services provided by Xoserve as part of the transportation charge.¹⁵ In our October 2013 decision¹⁶ we noted that the intent of our preliminary recommendations, was to allow for wider participation by users in the decision making process and for all users to directly fund services. We consider that the changes proposed by UNC565 and its alternatives will further the relevant objective by providing parties with greater transparency on the CDSPs costs, and a greater opportunity through the decision making process to influence the efficient operation of the CDSP.

We therefore consider that UNC565, UNC565A and UNC565B all better meet the relevant objective.

¹² The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Gas Act 1986 as amended.

¹³ <https://www.ofgem.gov.uk/publications-and-updates/decision-new-standard-special-condition-a15a-central-data-service-provider-modification-ssc-a15-agency-and-other-consequential-modifications-gas-transporter-licence>.

¹⁴ SSC A15A applies to GTs with Part A of the SSC in effect in their licence i.e. NG NTS and the GDNs.

¹⁵ IGTs will not become parties to the UNC until Project Nexus implementation.

¹⁶ [Xoserve - decision in relation to new funding, governance and ownership arrangements for the gas transporters' central agent, October 2013](#)

Proposals for DSC Committee representation

UNC565, UNC565A and UNC565B each propose the establishment of Code Sub-Committees ('DSC' Committees) to represent users in the management of the DSC (the Contract Management Committee) and in the management of changes to the DSC (Change Management Committee). Each Committee will comprise up to 12 representatives with 6 representatives appointed by shippers and 6 representatives appointed by transporters. UNC565 and the alternative modifications agree on the basis on which shippers should nominate representatives to DSC Committees, but propose different arrangements for transporter representation, as shown below.

Proposal	Number of representatives on DSC Committees					
	GDNs	IGTs	NGGT	Shipper Class A ¹⁷	Shipper Class B ¹⁸	Shipper Class C ¹⁹
0565	3	2	1	2	2	2
0565A	2	2	2	2	2	2
0565B	4	1	1	2	2	2

In the responses to the industry consultation, a number of GDNs have said that the arrangements proposed by UNC565B represent an appropriate balance of influence and risk commensurate with the level of funding and interest transporter parties have in respect of the activities of Xoserve in its role as the CDSP. For this reason, they consider that it would be disproportionate for IGTs and GDNs to have the same level of representation on the DSC Committees, given the different extents to which they are exposed to funding the CDSP. GDNs also argue that IGT's concerns on decisions being imposed on them by GDNs are overstated because there are only two CDSP Services which could be considered to be a Restricted Transporter Class vote and only one of these Services is shared exclusively between GDNs and IGTs. In contrast, a number of the GDNs say that UNC565 and UNC565A would give IGTs a significant say in five CDSP Service areas which are provided for the industry on behalf of GDNs and NGGT, in respect of which IGTs have no licence obligation to deliver.

In their responses to the industry consultation, shippers, IGTs and NGGT preferred the implementation of UNC565A. These respondents say that the balance of representation it proposes for the DSC Committees will require a co-operative approach to decision making and prevent the voices of smaller parties from being marginalised. They also consider that the co-operative approach enabled by UNC565A will position Xoserve, as the CDSP, as a provider to the whole market and lead to better outcomes.

SSC A15A does not specify how joint control of the CDSP should be achieved, thereby enabling industry to develop appropriate arrangements at the code level. We note the views expressed by the GDNs in relation to funding and risk. We are, however, concerned that the arrangements proposed by UNC565 and UNC565B would make it more difficult to build a co-operative approach to decision making because of the greater weight that would be given to the views of the GDNs relative to other transporter parties. We do not have a view on the 'right' number of representatives for each category of user, and recognise that the allocation proposed under UNC565A is a function of how the proposals developed over time. However, in the context of the proposals made by industry and delivering a full co-operative governance model, we consider that the model of representation proposed by UNC565A is the right starting point. We consider that UNC565A establishes appropriate arrangements from which to

¹⁷ Large domestic Shippers

¹⁸ Industrial/Commercial Shippers

¹⁹ Shippers not in Class A or Class B

build a basis for the engagement and co-operative decision making that should support Xoserve to deliver services in the interests of the industry and of gas consumers.

A co-operative model for Xoserve sits at the core of the Funding, Governance and Ownership proposals and will promote more effective competition in the gas market. It will ensure that Xoserve, as the CDSP, is focused on providing a good quality of service to its shipper customers, be that in the provision of gas settlement or registration services. Both of these services are instrumental in supporting competition in the sector; we hope that over time a co-operative Xoserve, with supportive governance, will ensure that appropriate focus is given to evolving the services the CDSP delivers in a way demanded by shipper customers that supports more effective competition. An example of the kind of evolution of services which might take place relates to meter reading submissions, recognising that improving settlement accuracy will sharpen price signals and improve competition.

GDNs raised concerns in relation to Ofgem's recent decision on the funding arrangements for their share of Xoserve's costs. NGGD noted its view that the proposed funding arrangements were not fully consistent with the principle of joint control and that the voting influence of other parties could leave GDNs exposed to a share of the CDSPs costs which exceed their price control allowance. In our September 2016 decision on our review of gas transporter agency (Xoserve) costs²⁰ we noted that delays to Project Nexus and FGO had reduced our confidence in the ability of the industry to create an effective co-operative model to govern Xoserve's costs. Therefore we decided to retain gas transporters' share of Xoserve's costs within the price control allowance to protect consumers from inefficient and uncontrolled costs being incurred²¹. We said that we will reconsider our position to retain Xoserve costs within GT allowances for the next gas transporter price controls based on the performance of the industry in creating an effective co-operative governance model in practice for Xoserve from 1 April 2017.

Overall, for the reasons set out above, we consider that UNC565A best meets this relevant objective.

(f) the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code

In the responses to the industry consultation a question was raised as to whether the benefits of the FGO programme will be outweighed by the costs to the industry of developing the framework and the ongoing costs associated with the additional and more complex governance and contractual arrangements. Other respondents welcomed the changes proposed by UNC565 and its alternatives. A number of parties say that the model of DSC representation proposed by UNC565A will promote the use of self-governance and reduce the need to use the appeals procedure developed under the arrangements, in this way making the administration of the Code more efficient.

We recognise that the changes introduce new processes to be administered under the UNC. This includes, for example, the process under which, subject to certain criteria, decisions of a DSC Committee may be appealed to the UNC Committee (UNCC). In making a decision the UNCC is required to decide if the matter before it meets certain further criteria as to materiality, and if so decision of the UNCC may be appealed to the Authority. We acknowledge that the new arrangements should enable appeal to the Authority in certain circumstances. We expect, however, industry to work together wherever possible to reach agreement. Where issues may arise, we welcome the

²⁰ <https://www.ofgem.gov.uk/publications-and-updates/decision-our-review-gas-transporter-agency-xoserve-costs-riio-gd1-and-t1>

²¹ We made a decision in September 2016 to set the allowed expenditure for the gas transporters in relation to their Xoserve costs for RIIO-GD1 and T1 period (April 2013 to March 2021) at £488.4m, in the context of total allowed expenditure of approximately £20 billion set for this entire period.

processes that have been included to enable the industry to seek to resolve these at the code level, and anticipate that appeals to the Authority will therefore be rare.

The proposed governance arrangements have been developed by industry to meet the requirements of SSC A15A, including the need to provide for wider participation in Xoserve's decision making. We agree that increased visibility of charges, the increased participation in decision making and the balance of representation on the DSC Committees proposed by UNC565A provides an appropriate basis for Xoserve to respond more effectively and efficiently to the needs of its users. We consider that these benefits should outweigh any potential cost and/or additional complexity in the administration of the UNC.

We recognise that the industry has worked at pace to deliver the legal text that sits behind UNC565 and its alternates, and that some further work may be necessary to refine the proposed arrangements. We now look to industry parties to take the necessary steps to become a party to the new arrangements and to work co-operatively to develop them thereafter in the interests of Xoserve's customers as a whole and to the benefit of gas consumers.

CMA Code Governance Remedies

In June 2014 we issued our decision to refer the retail energy market to the Competition and Markets Authority (CMA) for investigation.²² The CMA published its final report in June 2016.²³ The CMA found that a number of features of the energy markets related to industry code governance give rise to an adverse effect on competition (AEC), through limiting innovation and causing the energy markets to fail to keep pace with regulatory developments and other policy objectives. The CMA has recommended a number of remedies to address this AEC, including a recommendation to BEIS²⁴ to make the provision of code administration and delivery services activities licensed by Ofgem.

There is further work required to implement this remedy. We issued our initial consultation²⁵ in November setting out some models for licensing as well as our plans to set a strategic direction for codes and to establish a Consultative Board. We recognise that implementing these remedies could result in further changes to Xoserve's governance arrangements. However, we consider that the changes under UNC565A are consistent with the direction of travel of the CMA's remedies in this area and are a beneficial step towards delivering the more fundamental reforms to the wider industry governance arrangements.

Decision notice

In accordance with Standard Special Condition A11 of the Gas Transporters licence, the Authority hereby directs that modification proposal UNC565A: '*Central Data Services Provider – General framework and obligations*' be made.

Rob Salter-Church

Partner – Consumers and Competition

Signed on behalf of the Authority and authorised for that purpose

²² https://www.ofgem.gov.uk/sites/default/files/docs/2014/06/state_of_the_market_-_decision_document_in_ofgem_template.pdf

²³ <https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf>

²⁴ Department for Business, Energy and Industrial Strategy

²⁵ https://www.ofgem.gov.uk/system/files/docs/2016/11/industry_code_governance_-_initial_consultation_on_implementing_the_competition_and_markets_authoritys_recommendations.pdf