

Modification proposal:	Uniform Network Code (UNC) 593V (UNC593V) and Independent Gas Transporters (IGT) UNC 095VV (IGT095VV): 'Provision of access to Domestic Consumer data for Price Comparison Websites and Third Party Intermediaries'		
Decision:	The Authority ¹ directs modifications UNC593V and IGT095VV be made ²		
Target audience:	UNC Panel, IGT UNC Panel, UNC Parties, IGT UNC Parties and other interested parties		
Date of publication:	18 October 2017	Implementation date:	To be confirmed by DSC Change Management Committee

Background

The modifications seek to create the necessary permissions for GTs and IGTs to release certain domestic customer data to Price Comparison Websites (PCWs).³

The release of this data to PCWs is required to satisfy an Order (the Order) made by the Competition and Markets Authority (CMA).⁴ The intention of this Order was for data to be released to PCWs from 28 February 2017 subject to reasonable access conditions being met.⁵ CMA has been informed of the delay in meeting the requirements of the Order and the reasons for this.

The UNC Panel considered UNC593 at its meeting on 16 February 2017. The IGT UNC Panel considered IGT095 on 23 February 2017.⁶ The UNC Panel and the IGT UNC Panel did not recommend that the Authority approve these proposals. Concerns were raised by a wide range of parties including GTs, IGTs and shippers. Parties noted concerns around the use of Data Enquiry Service (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. In addition, they were unclear 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.

Ofgem sent back UNC593 and IGT095 for further consideration on 1 March 2017.⁷ The reasons for this are set out in a letter to the IGT UNC Panel and the UNC Panel.

The modifications considered in this letter are variations to IGT095 and UNC593.

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 49A of the Electricity Act 1989.

³ The definition of PCWs also includes internet based Third Party Intermediaries.

⁴ The Energy Markets Investigation (ECOES/DES) Order 2016

<https://assets.publishing.service.gov.uk/media/58513da4e5274a13030000b0/energy-market-ECOES-DES-order-2016.pdf>

⁵ 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.

⁶ 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

⁷ <https://www.gasgovernance.co.uk/sites/default/files/qqf/Ofgem%20UNC0593%20IGT095%20Send%20Back%20Letter.pdf>

The modification proposals

The modifications to the UNC and IGT UNC seek to:

- Define PCWs and TPIs to whom data can be disclosed. This definition would restrict access to internet based organisations and domestic market data only.
- Define the data items that can be accessed as being: Supply Meter Point Reference Number (MPRN), supply point address, Meter Post Code, supplier, meter mechanism, network operator, meter capacity, meter serial number, Annual Quantity and Local Distribution Zone.
- Authorise the Central Data Services Provider (CDSP) to provide PCWs with access to the data items only where the PCW has received consent from the consumer and where the PCW has entered into confidentiality and service agreements as well as reasonable access conditions.
- Require the CDSP to produce a report by 31 March each year, to identify who has signed up to the confidentiality and service agreements.

UNC and IGT UNC Panel recommendations

At its meeting on 20 September 2017, the IGT UNC Panel considered that implementation of IGT095VV would better facilitate relevant objective (d) and voted unanimously to recommend that IGT095VV be implemented.

The UNC Panel met on 21 September 2017. The UNC Panel voted unanimously to recommend implementation of UNC593V. They considered that it would better facilitate relevant objective (d) because it removes or mitigates an adverse effect on competition as identified by the CMA in the conclusions of its energy markets investigation.

Our decision

We have considered the issues raised by the modification proposals and the IGT UNC and UNC Final Modification Reports (FMRs), dated 20 September 2017 and 21 September 2017 respectively. We have also taken into account the responses to the industry consultations summarised in the FMRs and published in full on the Joint Office and IGT UNC websites⁸. We have concluded that:

- the implementation of IGT095VV and UNC593V will better facilitate the achievement of the relevant objectives of the UNC and IGT UNC respectively;⁹ and
- directing that IGT095VV and UNC593V be made is consistent with our principal objective and statutory duties.¹⁰

We recognise that the modifications give permission to release data and that the detail of the contractual arrangements and delivery mechanism are out of scope of the modifications to the codes themselves, and are still to be finalised. We consider that the overall remedy identified by the CMA is in consumers' interests. We are looking to the UNC Panel, the IGT UNC Panel, and their committees as relevant, to work with the CDSP to ensure that that development, implementation and operation of the arrangements needed to secure the remedy in its entirety, in particular in relation to data protection, adequately protect consumers.

⁸ 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

⁹ As set out in Standard Special Condition A11(1) and Standard Condition 9 of the Gas Transporters Licence, available at: <https://epr.ofgem.gov.uk/Content/Documents/Standard%20Special%20Condition%20-%20PART%20A%20Consolidated%20-%20Current%20Version.pdf>

¹⁰ 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.

Reasons for our decision

There were 10 responses to the Joint Office consultation on UNC593V of which six supported and four offered qualified support for the modification. There were five responses to the Gemserv consultation on IGT095VV of which one provided full support and four offered qualified support. Those that provided qualified support were typically concerned about whether the modification could be implemented prior to a technical solution and before necessary contractual arrangements were in place that would be compliant with the Data Protection Act (DPA) requirements.

We agree with respondents and the Panels that the proposals should be considered against relevant objective (d), and that they would have a neutral impact upon the other relevant objectives.

(d) the securing of effective competition between relevant gas shippers and between relevant gas suppliers

UNC593V and IGT095VV are enabling modifications that will provide the necessary permissions to allow the CDSP to provide PCWs with access to specified data items. Data will only be released to a PCW with the customer's permission and when confidentiality and service agreements are in place and on reasonable access conditions. While the terms of the confidentiality and service agreement must be no less onerous than paragraph 5 of Section V of the Transportation Principal document, the detail of these agreements, the reasonable access conditions and the technical solution for accessing the data are outside the scope of these modifications.

We note that the CMA has confirmed that access to the data via an Application Programme Interface (API) service, with an interim telephone service being in place before that, would meet the requirements of the Order. We understand that it is the intention of the CDSP to provide PCWs with access to data via an API service with a telephone service being available prior to the API solution.

We agree with the views of consultation respondents and the Panel that the proposal will better meet relevant objective (d) because it helps to remove or mitigates an adverse effect on competition as identified by the CMA in the conclusions of its energy markets investigation.

Timely access and accurate data, through an API service, should allow PCWs to help improve customers' switching experience and avoid reliability issues, for example on erroneous switches as well delayed and abandoned switches. With the customer's permission, PCWs will, as part of the live sales process, be able to check the address held by the CDSP with the customer. PCWs will also, with the customer's permission, be able to access other data items, for example, MPRN, meter mechanism and meter serial number. This can help to confirm that they have identified the correct supply point to switch and as well as to resolve any problems that could otherwise lead to a delay, abandoned switch or an erroneous switch.

We welcome the consideration given by the workgroups and both panels to the issues raised in our send back letter. In particular, we welcome the development of a Privacy Impact Assessment (PIA) to support thinking on data protection issues.

In the send back letter, we asked panels to consider what provisions should be in place to ensure consumer consent will be positive and informed. We note that the intention from the accompanying PIA is that PCWs must have an opt-in clear statement of consent on their websites. However, the form of the consent required from the customer is not specified in the legal text. We would therefore welcome the Panels, and the relevant Data

Services Contract (DSC) committee(s) as necessary, working with the CDSP to ensure that customer consent will be positive and informed before data is released to a PCW.

The IGT UNC Panel recommended that implementation should be linked to implementation of the technical and contractual solutions proposed by Xoserve, the CDSP. Because the technical solution and the detailed contractual arrangements are not specified in the modifications, the IGT UNC Panel believed that parties could be put in breach of the data protection requirements should a PCW request information about domestic consumers, for example if the CDSP released data using a technical solution other than that described during the development of the modifications. The UNC Panel considered the concerns expressed regarding timing and content of the changes and noted that this would be resolved through the DSC Change Management Committee.

We also note the concerns raised by some parties that the delivery mechanism as well as the detail of the contractual arrangements are outside the scope of the modification. As such, they considered there is no guarantee that the proposed API solution, with its ability to track and audit access to data from PCWs, would be implemented appropriately or that the agreements in place would be suitable to address data protection concerns.

Given that the details of the contractual and technical arrangements have both not been finalised and nor are they within the scope of this modification, we are unable to comment on the detail of these arrangements. It is the responsibility of relevant parties to implement the delivery mechanism and necessary contractual arrangements to meet their legal obligations on data protection to ensure consumer data is adequately safeguarded.

We agree that implementation timings should be carefully considered to ensure that appropriate measures are in place so that data will only be released to PCWs in accordance with all relevant data protection legislation. We agree that, if possible, it would be sensible to link implementation of the modifications to there being satisfactory technical and contractual solutions in place. We expect the relevant DSC committees, or the UNC and IGT UNC Panels as is necessary, to consider how this outcome should best be achieved. In the context of the implementation date of the Order, which has passed, we expect contractual and technical arrangements to be in place quickly so that PCWs can access data.

We note that compliance with data protection legislation is an ongoing requirement. Were there to be a breach, some parties have expressed concern that the financial liabilities would be passed on to CDSP customers. We therefore suggest that the UNC Panel and the IGT UNC Panel consider what information and assurances they require on an ongoing basis to understand that access to data is being provided in a way that meets the requirements of all relevant data protection legislation, taking into account the forthcoming General Data Protection Regulation (GDPR).

Whilst the issues outlined above do not amount to sufficient reason to reject the modification, we consider there are nevertheless material details not contained in the legal drafting which are essential to the effective implementation of this remedy. It is our understanding that there is an intention to include suitable safeguards to protect consumer data, as outlined in the FMR guideline principles for a service build, the accompanying PIA and the solution description provided by the CDSP.¹¹ We expect the Panels to ensure that these are delivered.

¹¹ <https://www.gasgovernance.co.uk/sites/default/files/qgf/page/2017-08/Modification%200593-095%20-%20Solution%20Description%20V2.0.pdf>

Decision notice

In accordance with Standard Special Condition A11 and Standard Condition 9 of the GT licence, the Authority hereby directs that modifications IGT095VV and UNC593V: *'Provision of access to Domestic Consumer data for Price Comparison Websites and Third Party Intermediaries'* be made to the UNC and the iGT UNC respectively.

Anthony Pygram

Partner, Consumers and Competition

Signed on behalf of the Authority and authorised for that purpose