

## Governance arrangements: accountability and implementation of the market facilitator

### Summary

Elexon believes that it is well placed to deliver effective governance and successfully implement the market facilitator role in a timely manner.

There are several arrangements under which Elexon can be held accountable for its decision-making and deliver at pace through open, transparent, and participatory engagement with Distribution Network Operators (DSO and DNOs), the National Energy System Operator (NESO), and market participants.

Several implementation options are feasible, although some might work better in the transitional phase for the quick establishment of the market facilitator. Others can serve as enduring solutions once other ongoing institutional reforms have taken place (e.g. Energy Code Governance Reform).

Regardless of the governance arrangements, Elexon believes that the framework should have some key attributes: Accountability, Trusted and Neutral, Delivering at pace, Ease of implementation, Simplicity, Dynamic and Adaptable, Portable, Enabling Coordination and Engagement, Inclusive and Collaborative, and Enabling Innovation and Customers' Benefits ('Whole System Approach').

Based on our experience in delivering complex programmes and net zero enablers (e.g. Market-wide Half Hourly Settlement programme) and our internal capabilities on market design and data platforms, Elexon believes it can meet all the key features that underpin a robust framework that will be critical for the delivery and implementation of this crucial new role at the heart of the new and existing markets.

### Preface

This document sets out Elexon's vision on the governance arrangements for enabling the market facilitator. We explain our approach and the rationale for our suggestions based on our initial analysis of potential viable options. Should Elexon be appointed as market facilitator, we will work closely with Ofgem, DSOs/DNOs, the NESO, Energy Networks Association (ENA) Open Networks, and market participants, including BSC Parties, to ensure a smooth transition and detailed governance arrangements in the initial phase of implementation and for enduring solutions.

### Context

Since the publication of the consultation Elexon has been seeking input and views from a broad range of stakeholders<sup>1</sup> to understand which characteristics and attributes are most important for them in terms of governance arrangements and which implementation option

<sup>1</sup> DNOs, Consumers' and Industry Associations, including ENA.

best meets the role requirements. Based on these conversations, we have identified some recurring questions and themes that were highlighted consistently:

- The market facilitator should have a clear mandate, role and responsibilities; The ENA does not have the powers to hold DSOs/DNOs to account for any slow or inconsistent implementation, and thus relies on the good will of its members to progress this work. Accountability of the market participants to the market facilitator is key.
- Regardless of who is appointed, the market facilitator should work with ENA Open Networks (ON) and Ofgem in the transition phase to ensure the delivery of interim deliverables until the enduring regulatory framework is in place.
- The market facilitator should strike a balance between the need of ensuring an inclusive and collaborative approach to decision-making and having governance arrangements and processes that are agile.
- The market facilitator should be a neutral entity with no conflict of interest as a buyer of flexibility and a market rule maker. The market facilitator should be transparent and credible in delivering its roles and responsibilities. Governance arrangements should be designed in a way that is trusted.
- The market facilitator should interact with a wide range of stakeholders to allow inclusiveness and balanced decision-making in the interest of markets and consumers.

Based on our engagement, we have identified some general attributes and criteria<sup>2</sup> that we believe should inform the governance arrangements, regardless of which organisation is chosen to fill this important role. They are built on:

- a) the thinking we set out in our vision on what we believe to be the fundamental objectives of the market facilitator;
- b) the feedback and input we received from the stakeholders during our engagement;
- c) the criteria outlined by Ofgem in its decision on the future of local institutions and governance<sup>3</sup>.

Accountability	There is clarity on the roles and responsibilities being performed by institutions, with recourse for non-delivery
Trusted and Neutral	Arrangements are designed in a way that the market facilitator is trusted and neutral, transparent and credible in delivering its roles and responsibilities
Delivering at pace	Arrangements are designed in a way that the market facilitator can be enabled in a timely manner and that have adequate powers to remove barriers and speed up processes
Ease of implementation	The governance framework can be easily and smoothly implemented
Simplicity	Processes are agile and institutional and governance arrangements simple, such that stakeholders can engage with a given set of arrangements
Dynamic and Adaptable	Arrangements can be responsive and keep up with the pace of change in flexibility markets
Portable	Arrangements can be easily moved and 'shifted' should Ofgem wish to appoint another market facilitator in the future, or a change be required due to the institutional reforms (e.g. Energy Code Reform).
Coordination and engagement	There is effective coordination and dialogue between institutions supported by robust engagement with stakeholders. A key consideration for the effectiveness of coordination is the extent to which information exchange is enabled.
Inclusive and Collaborative	Arrangements allow for an inclusive and collaborative participation by all market participants

<sup>2</sup> It should be noted that these principles are not listed in terms of importance. Elexon believes that are all relevant and equally important for the successful deliver and implementation of the role.

<sup>3</sup> [Decision on Future of Local energy institutions and governance](#)

Enabling innovation and customers' benefits ('Whole System Approach')	Arrangements are designed in a way that decisions are made in the primary interest of customers/consumers and by applying a whole system approach to deliver efficient future-proofed flexible markets, stimulate innovation and competition
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Elexon believes that these features should guide the work of the market facilitator while engaging with the market participants and making decisions.

## Accountability

### Accountability of the market participants toward the market facilitator

Both Ofgem and the stakeholders stressed that the accountability of the market participants towards the market facilitator is a key attribute for the successful delivery of the role. An important lesson learned from the experience of the ENA ON programme is that a clear mandate and set of responsibilities are required to drive change and successfully deliver the required outputs in a consistent and coordinated way. It is therefore paramount that the governance structure is set up in a way that ensures that the market facilitator is empowered to take action to remove any conflict or barriers during the process and the market participants cooperate in a consistent way. Without this, progress could be easily stalled, or sub-optimal outcomes achieved, if a minority of parties were not to engage properly. Elexon believes it will be important that Ofgem provides the appropriate support for this new framework and that the market facilitator has powers to ensure its decisions are enforceable.

In the consultation document, Ofgem sets out its intention to ensure accountability of markets participants like DSOs/DNOs towards the market facilitator via changes to their licences. In general terms, we believe that this will support accountability, but despite being a mechanism to address several issues, it would not be sufficient. In particular (i) the market facilitator would have no power under the Distribution Licence, so DNOs would not be directly accountable to the market facilitator if the licence was the only accountability mechanism; and (ii) not all market participants are licensed entities (e.g. aggregators and Virtual Lead Parties). Therefore, some thinking will be required to ensure the accountability of all participants (for instance via contractual arrangements which could be either bilateral between the market facilitator and the market participant or through a multilateral contract).

### Accountability of Elexon (as market facilitator) towards Ofgem

With regards to the accountability of Elexon towards Ofgem, Ofgem expresses its willingness to produce a market facilitator governance framework document like the one in place for delivering the MHHS Programme. The MHHS governance framework is established under BSC Section C (paragraph 12) and compliance with the framework is required under the BSC. As we explain in more detail below, should Elexon be appointed as market facilitator, we will work closely with Ofgem to ensure there is a similar relationship between the market facilitator governance framework document and the BSC to ensure Elexon's compliance. Elexon supports this option, although believes it is not the only possible solution, as will be clarified in more detail in following paragraphs.

In general terms, Elexon believes that having a standalone document outlining the governance arrangements, roles and responsibilities of the market facilitator presents several benefits and aligns well with the criteria that we think should inform the framework (in particular, agility, portability, dynamic and adaptable) compared with the option of including the obligations and arrangements into a licence (as envisaged for the NESO). Moreover, in terms of speed and ease of implementation, we do not share Ofgem's view that in the transitional phase, the market facilitator role can be enabled faster and more efficiently through the inclusion of a set of rules and obligations in the licence, especially if the licence

in question is related to a non-operational entity.

## Implementation

In the consultation document Ofgem outlines that Elexon could be enabled as market facilitator via a modification of the Balancing Settlement Code (BSC). Ofgem envisaged a 2-phases process:

- Phase 1: Enabling BSC modification to expand Elexon's remit to include the market facilitator role before further design and development work is undertaken. This modification would need to be raised by a BSC party.
- Phase 2: Second BSC modification required for the detailed market facilitator arrangements, including the model for governance, funding, and operation. This modification would also need to be raised by a BSC party and progressed through the BSC change process before being submitted to Ofgem for approval. This BSC modification proposal may be preceded by a BSC issue group if necessary.

Ofgem stressed that this process can be lengthy due to the required governance process and need for stakeholder engagement and solution development. Moreover, in its assessment of Elexon's suitability as market facilitator, Ofgem outlined two main challenges in the case of Elexon, if appointed:

1. The start of the process is reliant on a third party and the timeline is determined by the BSC Panel, on recommendation from Elexon, and is therefore out of Ofgem's control. This introduces greater risk into the process and could result in delays to appointing and setting up the market facilitator role.
2. When thinking about transition arrangements, while Elexon participates in ENA Open Networks it does not currently sit on the Steering Group and is less involved than the ESO in the technical working groups and overall delivery. According to Ofgem this could make it harder and take longer for Elexon, if appointed, to take a substantive leadership role ahead of formally becoming the market facilitator.

We disagree with this assessment for the following reasons:

1. Several parties entitled to raise modifications under the BSC have already expressed their willingness to support Elexon as market facilitator and to raise the required change to the BSC Code. We therefore believe that there is no obstacle to the swift and agile start of the process. To address some of Ofgem's concerns, it should be noted that 2022/23 saw the highest number of BSC changes (21 Mods and 21 CPs) in a single year since 2009. Despite this, Elexon was able to deliver the three Urgent Mods (P452, P448, P446, plus others) very quickly, with P446 implemented in just over a week. Moreover, with specific reference to the market facilitator implementation, the BSC Panel expressed its willingness to support Elexon should it be appointed. In light of the above, it is more than reasonable to assume that there is no risk of delay to the start of the process. This view is also supported by the fact that Elexon has considerable experience in implementing at pace complex processes aimed at determining governance arrangements, as will be explained later when outlining the different options. In terms of a timeline for a BSC modification to expand Elexon's remit (Phase 1), we believe it can take 2 to 3 months to complete the process. With reference to Phase 2, Elexon believes that if a governance model similar to the one already applied for MHHS were to be replicated - this being a model with which stakeholders are already familiar and which has proven to be efficient and agile - the process could be relatively fast, and surely much faster than

- that necessary to introduce a governance model in a licence.
2. Regarding Elexon's ability to play a leading role within the ENA ON programme, since the publication of the consultation we have been extensively engaging with ENA ON and ON participants, and we have received strong reassurance that the ON programme will support Elexon and recognise its leadership role should Elexon be appointed. Moreover, Elexon believes that it will be best suited to ensure a smooth transition for two main reasons:
    - a. ON governance arrangements are well aligned with current Elexon governance arrangements. This means that the two organisations could work well together to ensure a smooth and easy transition;
    - b. Elexon is regarded by different parties and market participants as a trusted, neutral organisation. As also outlined by Ofgem in the consultation '*Elexon is a not for profit, independent entity delivering key energy system functions. It is not a procurer of flexibility and does not participate in the markets that the market facilitator will be responsible for, and its overarching institutional arrangements are well aligned with taking on the market facilitator role*'. There are no risks (neither real nor potential) that Elexon's activity as market facilitator is in any way susceptible to suspicion or disturbed by the shadow of conflict of interest (real or potential). We believe that to be able to immediately exercise a leadership role, it is necessary that the parties involved recognise the credibility and the absence of conflicts of interest (even perceived) in the work of the market facilitator. For these reasons, we argue that Elexon will be the most suitable candidate to successfully perform the leadership role within the ON programme.

## Potential options

We see different viable options to enable Elexon as the market facilitator and ensure its accountability towards Ofgem and the accountability of markets participants toward the market facilitator. In the table below we outline these options at a high-level. It should be noted that this is an initial estimate based on our experience and current understanding of the role and Ofgem's expectations. Should Elexon be appointed, we will work with Ofgem, and the industry to discuss the detailed design of the market facilitator's role and implement a transition plan in line with the criteria that we identified and believe should underpin the governance framework.

### Overview of implementation options

Options	High-level description	Accountability of Elexon towards Ofgem	Accountability of the parties towards the market facilitator
Option 1 BSC governance	The implementation governance will follow usual BSC governance i.e. the BSC modification procedures.	Accountability will be dealt via BSC obligations in the short term (transitional phase), which will be introduced through an initial market facilitator governance modification. This will be superseded by licence changes	The market facilitator could hold to account BSC Parties who are involved in implementation via BSC obligations and Ofgem could hold licensed parties to account via the licence.

		as part of the Energy Code Reform work (enduring arrangements)	
Option 2 Bespoke governance model (following the MHHS approach) – option envisaged by Ofgem	The MHHS governance framework is established under BSC Section C (paragraph 12) and compliance with the framework is required under the BSC. Should Elexon be appointed to the market facilitator role, we will work closely with Ofgem to ensure there is a similar relationship between the market facilitator governance framework document and the BSC to ensure Elexon's compliance. Similarly to MHHS, this would enable the enduring flexibility market rules to be developed by Elexon using bespoke governance with much less dependency on the BSC Modification procedures	Accountability will be dealt via BSC obligations in the short term (transitional phase) and be superseded by licence changes as part of the Energy Code Reform work (enduring arrangements)	The market facilitator could hold to account BSC Parties who are involved in implementation via BSC obligations and Ofgem could hold licensed parties to account via the licence.
Option 3 (Flexibility Code).	Under this option the implementation governance framework will be established as the initial version of a new standalone 'code' (not referenced in BSC). This would establish a framework for the development of the enduring rules	Elexon will be accountable to Ofgem via the licence.	Parties will be obliged to comply with the Code by licence conditions.  The Code itself will also have contractual force allowing enforcement options that the market facilitator can leverage to be developed.  Non-licensed participants will need to sign up to the Code in order to participate in flexibility markets.

Option 1 leverages existing governance, funding and operations arrangements. Whilst not fully following BSC Modification procedures, Elexon's approach to developing the enduring

governance, funding and operations for the Data Integration Platform<sup>4</sup> (DIP) is a comparable model, including the approach to seeking input and views from users and interested parties. The guiding principles used during the design of the DIP arrangements in collaboration with 101 Issue Group were to base them on the Code Manager approach suggested by the [Codes Review](#): consider industry best practice and to allow the arrangements to be portable should the DIP Manager role be reassigned.

Options 2 has already proved to be a credible option for developing and implementing the Market-wide Half Hourly Settlement (MHHS) Programme and ensuring accountability towards Ofgem, as well as a high-level of collaboration and engagement with Ofgem and the stakeholders.

Option 3 has been excluded by Ofgem in the consultation as a viable avenue to enable the market facilitator role. This is because the reform is still being drafted and consulted upon. For this reason, Elexon agrees with Ofgem that in the immediate future this is not a suitable option for enabling the role. However, Elexon disagrees with Ofgem that this reform has no impact on the choice of the best option for governance arrangements. In fact, it must be considered that, in the light of the Energy Act, the introduction of the concept of Licensed Code Managers represents a near certainty. Hence the importance of the portability criterion in the choice of governance options, criterion that is fully satisfied by both options 1 and 2<sup>4</sup>. We also notice that several parties raised the option of a flexibility code in their consultation responses to the March 2023 consultation. If there is consensus that a flexibility code is a suitable mechanism to enable distributed flexibility markets and to drive coordination and alignment between transmission and distribution market arrangements, we will work with the industry and Ofgem to develop such a code. It will be important to call out and consider numerous interconnections and interdependencies between arrangements governing ancillary services markets, Balancing Mechanism and distribution market arrangements.

In terms of the Energy Code Reform timeline, Ofgem has recently published a consultation<sup>5</sup> outlining the key phases of the implementation of the Energy Code Reform:

- expecting to publish a joint consultation with DESNZ in Q1 2024 on code manager licence conditions and secondary legislation for code manager selection;
- secondary legislation and licence conditions will be in place by the end of 2025.

In light of the above, it is reasonable to believe that there will be an alignment between the start of the market facilitation activity (by the end of 2025) and the implementation and operation of the new arrangements, Elexon will soon be a licensee and this should remove doubts in relation to Ofgem's future ability to control and monitor Elexon and, more generally, in Elexon's accountability to Ofgem and consumers, once the market facilitator is operational.

It could be argued that in the transitional phase Ofgem will not have direct control over Elexon until the Energy Code Reform introduces a code body licence. However, it should be noted that:

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<sup>4</sup> Moreover, the Energy Act 2023 provides a new obligation for Ofgem to issue an annual Strategic Direction Statement (SDS) for designated industry codes. Through this new role, Ofgem will set direction for the development of designated codes, in line with its overarching vision for the energy sector. The SDS will shape the development of codes in the interests of consumers and in line with technological and commercial developments at this critical time of change within the energy sector.

<sup>5</sup> <https://www.ofgem.gov.uk/publications/energy-code-reform-implementation-consultation>

1. in the transitional phase, accountability, control and monitoring can be adequately guaranteed through the BSC. The MHHS programme has demonstrated that a governance framework document and BSC obligations have performed well and ensured good performance and delivery at pace.
2. Ultimately, Elexon has a 25-year track record in delivering complex programmes in a timely manner even outside of specific governance arrangements and obligations. For example, recently Elexon was entrusted by the Government to administrate the Energy Price Guarantee and Energy Bill Discount Schemes. For these projects, Elexon had utilised domestic and non-domestic half-hourly consumption data alongside its extensive knowledge and successfully processed up to £650m of subsidy payments per week providing support for consumers in a timely manner.
3. Elexon believes that the risk of losing its reputation as a credible, capable entity would act as a sufficient incentive to deliver the requirements of the market facilitator role.

### **Performance assessment and external assurance process**

With reference to Ofgem's ability to assess the performance of the market facilitator, it will be appropriate to design a set of measures to protect the interests of customers and consumers. Since both candidates are not-for-profit entities, ordinary financial control/incentive mechanisms would not be appropriate because they would ultimately be paid by the customers/consumers.

Under the ongoing Energy Code Reform workstream, Elexon has shared several ideas on the performance control of not-for-profit entities such as, for example, the introduction of qualitative measures (e.g. stakeholder satisfaction surveys).

## Conclusions

Elexon strongly believes that it is well suited to design and implement suitable and effective governance arrangements for the market facilitator role in collaboration with Ofgem and the industry.

We believe that Elexon's current governance set-up and features better align with the fundamental criteria that should underpin the governance framework for the market facilitator role.

Elexon believes that enabling Elexon as market facilitator could be relatively simple, and straightforward under both Options 1 or 2. Both options will ensure the necessary portability that will allow a smooth transition under the changes that are being introduced by the Energy Codes Review. Overall, Option 2 would allow for a faster implementation compared with Option 1, as it will not require a second BSC modification and will be built similarly to MHHS governance arrangements.