

PUBLIC

BSC Change Business Requirements

P390

Ivar Macsween

V1.0

BSC CHANGE BUSINESS REQUIREMENTS

Document History

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21/11/2019	0.1	IM	NB, TW	Initial draft
19/12/2019	0.2	IM	NB, TW	Incorporated comments and further developed BRs and current/future state.
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Approvals

Date	Name	Role
7/2/2020	Justin Andrews	Head of Design Authority

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BSC CHANGE BUSINESS REQUIREMENTS

1. INTRODUCTION

1.1 Purpose

The BSC Change Business Requirements document is produced as part of the 'End to End BSC Change Process' during the BSC Change Assessment process. It is produced in line with ELEXON's standards for Business Analysis.

The purpose of this document is to communicate the Business Requirements of BSC Change P390 to industry members and service providers. It enables an initial impact assessment to be carried out by a Service Provider.

In addition it describes the anticipated impact on BSCCo (people, processes and systems), the BSC, Code Subsidiary Documents, and other Configurable Items.

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2. BSC CHANGE SUMMARY

2.1 P390 Problem Statement

The BSC restricts the activities of ELEXON and in the absence of a specific Modification any additional activities cannot be pursued by ELEXON (even when those activities would be of benefit to BSC Parties, industry generally and the consumer).

In the past specific Modifications have been necessary which have enabled ELEXON to provide the Warm Homes Discount Reconciliation service, EMR settlement, and to participate in gas performance assurance framework and REC manager appointment processes.

Such individual Modifications to extend ELEXON's vires are time consuming and can result in ELEXON being unable to pursue an opportunity within a required timeframe.

2.2 P390 Objectives

P390 aims to speed up the process of the ELEXON board bidding for activities of interest to them while ensuring that appropriate oversight and transparency remain for BSC Parties, whose money is used to fund bids.

2.3 P390 Scope

P390 will make amendments to BSC Section C 'BSCCo and its Subsidiaries' and BSC Section X, Annex X-1 'General Glossary'.

2.4 References

Document	Author	Date
P390 Initial Written Assessment	IM	13 September 2019
P390 Assessment Procedure Consultation	IM	10 February 2020

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3. BUSINESS REQUIREMENTS

3.1 Current State (As-Is situation)

ELEXON "vires" set out what ELEXON is allowed to do and are described under [BSC Section C 'BSCCo and its Subsidiaries'](#), with subsection 1.2 'Role and powers, functions and responsibilities of BSCCo' stating in 1.2.2 that:

"Subject to the further provisions of this Section C, BSCCo shall have the powers, functions and responsibilities set out in or assigned to it pursuant to the Code, and shall not undertake any business or activity other than as provided for in the Code."

As a result of these provisions, each time an opportunity arises where ELEXON might be able to extend the company's business beyond those activities contemplated in the Code, a Modification (either following the BSC's Modification Procedures or directed by the Secretary of State under statutory powers) is required to implement a change in the vires.

Previous Extensions of ELEXON's Vires

Ofgem have already approved two Modifications to extend ELEXON's vires and the scope of activities that ELEXON is permitted to undertake:

- Code manager for the Retail Energy Code – permitted via P365; and
- Gas Performance Assurance Framework Administrator (PAFA) – permitted via P330.

The ELEXON Board

The management of ELEXON as the Balancing and Settlement Code Company (BSCCo) is overseen by the ELEXON Board, which comprises an independent Chair, five independent Non-Executive Directors and the Chief Executive Officer. Of the independent non-executives, two are also independent from the electricity industry whilst three are appointed because they have relevant experience and/or of the industry.

The ELEXON Board is scheduled to meet on ten occasions each year, and will meet at other times where necessary. These meetings include main Board meetings, strategy meetings and committee meetings.

The Board publishes a circular every six months to keep Parties informed of the issues that the Board is currently focussed on.

The ELEXON Board is ultimately accountable to BSC Parties.

BSC Parties can vote to remove ELEXON's directors at the Annual BSC Meeting or at a General Meeting of Voting Parties, which can be requested at any time.

BSC Parties also have the right to request a vote, at an Annual BSC Meeting or a General Meeting, on non-binding resolutions, which will be advisory in nature for the Board.

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The following process diagram 1) details the current process for how ELEXON would seek approval for any expansion of its vires.

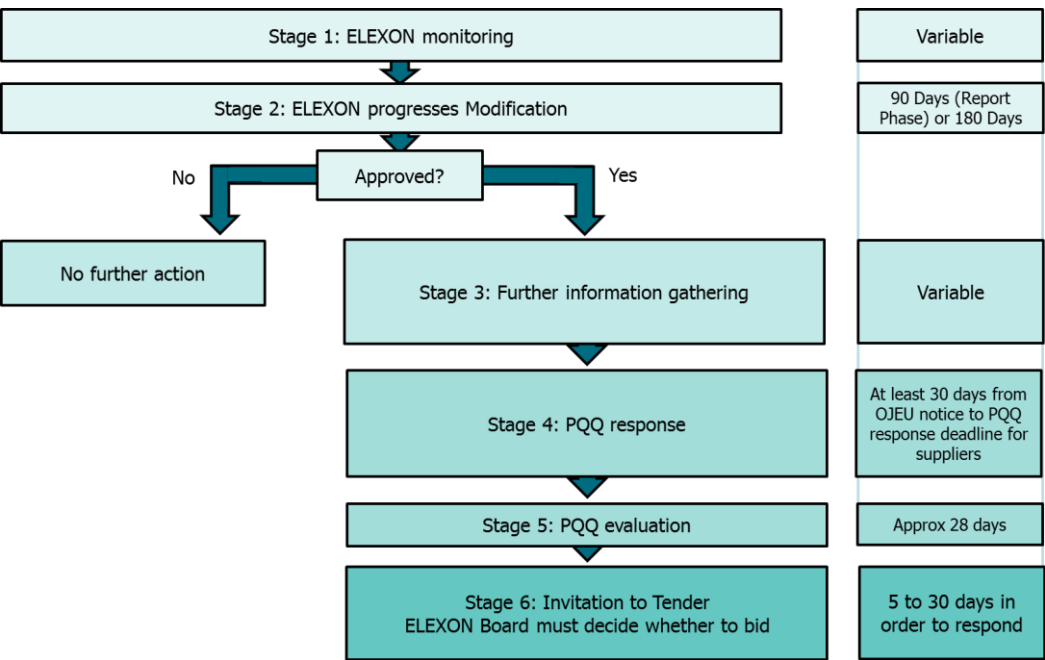
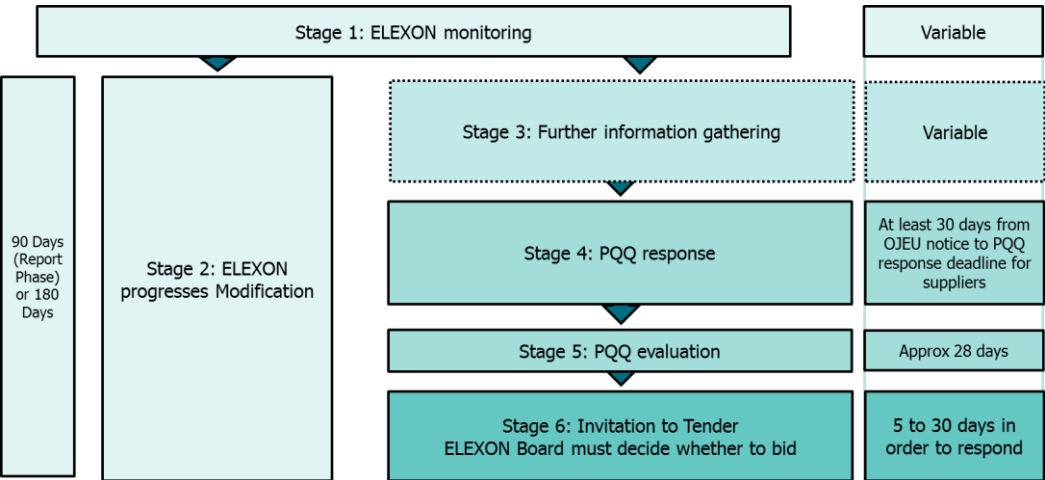


Diagram 1b) illustrates how this process may proceed with different stages progressed concurrently.



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What's the issue?

The BSC restricts the activities of ELEXON, even in cases when those activities would be of benefit to BSC Parties, industry generally and the consumer.

This has resulted in Parties to the BSC raising specific Modification Proposals to allow ELEXON to extend its "vires" with certain conditions attached to ring-fence the risk and establish how costs and benefits will be treated.

In the past, specific Modifications or explicit Secretary of State directions have been necessary to enable ELEXON to provide the Warm Homes Discount Reconciliation service, EMR settlement, and participate in gas assurance and REC manager appointment processes.

Despite receiving industry support for taking on new activities, such individual Modifications to extend ELEXON's vires are time consuming and can be an unnecessary distraction for industry.

The Proposal notes that they can also result in ELEXON being unable to pursue an opportunity within a required timeframe as each time an opportunity arises where ELEXON might be able to extend the company's activities a Modification Proposal is required to agree a change in the vires.

This can be inefficient for industry and the Proposal notes that it could hamper ELEXON's ability to respond to a new business opportunity that would be beneficial to BSC Parties and the consumer.

Under the last specific Modification (P365), which amended the ELEXON vires to allow ELEXON to bid for the Retail Energy Code Manager role, one Party suggested that the Proposal did not go far enough. They suggested that the ELEXON Board should be allowed to investigate any opportunity, which they felt allowed them to deliver the BSC services in a more efficient way.

Further, in its [decision letter on P365](#), the Authority agreed that this was perhaps something that could be considered in future.

3.2 Future State

Under the P390 Proposed solution, BSC Section C 'BSCCo and its Subsidiaries' will be amended to remove the need for Modifications to be progressed to expand ELEXON's vires to areas which meet the P390 conditions.

Ofgem criteria

In accepting BSC Modification [P284 'Expansion of ELEXON's role via the 'contract model''](#) in September 2012, Ofgem set out its view that whilst there might be benefits of diversification, robust arrangements had to be put in place to mitigate any additional risk to the BSC and BSC Parties. Ofgem considered that the following criteria would have to be met:

1. BSC Parties should benefit from any diversification;

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2. The arrangements should not place disproportionate risk on BSC Parties;
3. Standards of service under the BSC should be maintained; and
4. ELEXON's BSC role should not give it any undue competitive advantage in a contestable activity.

After considering Ofgem criteria 4) 'ELEXON's BSC role should not give it any undue competitive advantage in a contestable activity' the Workgroup and Proposer agreed to reintroduce this criteria into the P390 solution, as Ofgem expressed concern that whilst ELEXON can currently satisfy this condition, this may not always be the case.

The Workgroup noted that the main areas where ELEXON could have a undue competitive advantage was in relation to the use of data ELEXON already holds for BSC purposes, and the use of funding for individual bids. ELEXON does hold data (including GDPR data) which other bidders might not hold. However, the Code contains provision expressly setting out how such data is to be used and disclosed. This does not include tenders or other commercial activity. Given these restrictions can be changed under a Modification in the future, Ofgem would prefer an express confirmation of "no undue competitive advantage".

In relation to the funding of future bids, the Workgroup expressed concern that ELEXON could use the entire bidding budget on one bid and thus obtain an undue competitive advantage in comparison to other commercial bidders who may not have a similar budget.

To address this concern the Proposer and Workgroup agreed that introducing an inflation-linked cap of £100K per bid (from an annual 'pot' of 1% of BSC annual budget) would effectively mitigate this risk. This is on the basis that Ofgem approved this amount under both P330 and P365.

To ensure that appropriate oversight and transparency remain for BSC Parties, whose money is used to fund these bids, a number of conditions will be introduced which govern when the Board may decide to bid on an opportunity.

Several conditions were previously included as part of P330 and P365:

Conditions previously included	How achieved
BSC Parties should benefit from any diversification	<p>New activity to contribute its fair share to the existing BSC overheads, so defraying costs for BSC Parties for their benefit. In addition any new activity will provide opportunities to staff to work on a wider range of activities, which will help ELEXON to retain, attract and develop its people for the benefit of industry.</p> <p>BSC Parties will not fund any use of ELEXON staff on work for the separate companies following the start of the new activity commencing. Resource usage for such work will be recorded and transfer payments made from the new or existing separate company to ELEXON.</p> <p>Note EMR activity has contributed £3.5m over the last 5 years.</p>
The arrangements should not place disproportionate risk	<p>New activity(ies) will be ring fenced either in a new separate company or an existing separate company and ELEXON will not guarantee the obligations or liability of the new activities. Note that this is greater separation and protection than is provided by other</p>

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on BSC Parties	organisations that undertake Code administration services and which also undertake other activities within that same Code services company
Standards of service under the BSC should be maintained	<p>ELEXON will ensure and report that there is no adverse impact on the standards of service ELEXON provides to BSC Parties.</p> <p>Note during the years of delivering the WHD (6 years) and EMR (5 years) there is no evidence of a deterioration in ELEXON's services.</p>
Expenditure prior to start of activity has to be repaid within 5 years of start of activity	<p>Expenditure will be funded in the first instance by ELEXON from sums collected through the existing BSC annual budget mechanism, which is funded by BSC funding-parties.</p> <p>Note cost of bidding for WHD recovered in cost of WHD services over the contract period. Costs of early activity on CfD and CM settlement borne by DECC via a grant.</p> <p>Note: This is repayable to BSC Parties within 5 years of the new activity commencing. If ELEXON funds a role that does not successfully commence then, as with P330 and P365, ELEXON would most likely have to write-off the funding.</p>

In addition, P390 proposes to add the following conditions:

Proposed new Condition	Detail of Condition
Geographical limitation	<ul style="list-style-type: none"> Activity must be related to the UK and the Republic of Ireland
Sector limitation	<ul style="list-style-type: none"> Gas, electricity, heat and transport sector
Type of role	<ul style="list-style-type: none"> Demonstrable link to core competencies
Where any new activity is undertaken or won by ELEXON, including on a 'for profit' basis, then ELEXON would deliver that activity through a 'Permissible Affiliate' (a subsidiary of ELEXON) in accordance with the provisions of the BSC	<ul style="list-style-type: none"> If any new activities undertaken by the Permissible Affiliate resulted in a profit then any sums available for distribution would be paid as a dividend to ELEXON which would consequently offset BSC Party charges
Cost at risk (preparation and bid costs) in any year to be no more than 1% of that year's approved budget	<ul style="list-style-type: none"> 1% is considered an appropriate amount to represent a business development budget. Note: where any bid is unsuccessful then the amount of this budget spent on that bid will not be recoverable and will effectively be funded by BSC Parties
Each bid will be capped at a total of £100K (index-linked to inflation)	<ul style="list-style-type: none"> Each bid will cost no more than 100K (index-linked), with all bids cumulating in no more than 1% of annual budget

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The ELEXON Board will take the decisions whether to bid for and agree to undertake work, subject to the conditions outlined above.

The ELEXON Board will determine whether each of the conditions have been met.

P390 Consultation

Before taking a decision to bid for a new non-BSC activity, the ELEXON Board shall seek comments from Parties, the Panel and any interested third parties, who will have 10 Working Days to provide comments to ELEXON.

In seeking comments, the Board shall issue information on the nature and scope of the activity which it is interested in but shall not be required to disclose any information that is confidential to third parties or which ELEXON reasonably regards as being a commercially sensitive element of its own proposition.

Prior to a consultation, ELEXON will send as much notice as is reasonably practicable to Parties, the Panel and interested third parties informing them that it intends to, or may intend to, seek comments.

ELEXON will publish a summary of the comments received. As with responses to a Modification, any responses marked as confidential will not be published, but will be provided to the ELEXON Board and Ofgem.

P390 Ofgem Window

Following the closure of the consultation, ELEXON will pass responses, the Board's provisional views on each of the P390 conditions and any other suitable information to Ofgem for a 15 Working Day window.

In this window, Ofgem may reject the proposal or request an extension if they need more time to consider the proposal – if none of those actions are taken, however, then the Authority's consent for an expansion in vires is implied.

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3.3 Success Criteria

- 1) The P390 solution should increase the efficiency of ELEXON bidding for opportunities whilst still providing the necessary safeguards for the Ofgem and BSC Parties.
- 2) The process for approval to bid on opportunities under the P390 Solution should be quicker than the status quo.
- 3) The conditions introduced by P390 should be sufficient to ensure that ELEXON is limited to pursuing appropriate opportunities and thus remove the need for a Modification.

3.4 Business Requirements

Summary of Business Requirements

Number	Title
BR1	The ELEXON Board shall be entitled to bid on suitable opportunities (subject to conditions, which provide assurance to BSC Parties and Ofgem) without the need for a BSC Modification to be approved
BR2	Funds (referred to as tender costs) shall be made available for participation in a tender exercise by BSCCo
BR3	Tender costs must be reimbursed in the event of a successful tender exercise (reflecting existing requirements in Annex C-1 for RAFA and REC)
BR4	The BSCCo Board must ensure that bids to expand ELEXON vires must satisfy the P390 conditions
BR5	The costs of each bid shall recorded and reported back to BSC Parties
BR6	Consultation with interested parties prior to decision to bid
BR7	Window for Ofgem decision on expansions to ELEXON vires

BR1	
The ELEXON Board shall be entitled to bid on suitable opportunities (subject to conditions, which provide assurance to BSC Parties and Ofgem) without the need for a BSC Modification to be approved	
1.1	BSC Section C must be amended to allow the ELEXON Board to pursue suitable opportunities subject to the meeting of conditions in BR4.
1.2	New activities may only be delivered through a 'Permitted Affiliate'.

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1.3	BSCCo shall be entitled to establish a new separate company or acquire an existing separate company for the purpose of participating in a suitable tender.
1.4	If successful in the tender, a new separate company established by BSCCo may perform the functions and responsibilities of the role for which the tender is won.
1.5	Restrictions already exist in the BSC which create a ring fence: <ul style="list-style-type: none"> • BSCCo must not provide loans/guarantees etc to a permitted affiliate • Any transactions between ELEXON and a permitted affiliate must be on a commercial arms length basis • No cross subsidies from ELEXON
1.6	BSC to include new generic restriction preventing BSCCo from providing BSC data to a permitted affiliate other than on terms that such data is available to third parties
1.7	At any point following BR6 the Board shall be entitled to convene to consider consultation comments before making its decision on whether to submit a request to Ofgem

BR2

Funds (referred to as tender costs) shall be made available for participation in a tender exercise by BSCCo

2.1	BSCCo may provide a loan or grant credit to a subsidiary for purposes of tendering, provided always that the maximum amount of the loan or credit granted shall not in any event exceed the total aggregate sum of one hundred thousand pounds sterling (£100,000.00) per individual bid, with this amount index-linked to account for inflation.
2.2	The sum total incurred on bidding within a single year shall not exceed 1% of that year's annual budget.
2.3	Tender costs may be incurred over successive BSC Years (but will be drawn from different budgets i.e. funds not carried over between years)

BR3

Tender costs must be reimbursed in the event of a successful tender exercise (reflecting existing requirements in Annex C-1 for RAFA and REC)

3.1	Tender Costs shall be BSC Costs and BSCCo shall keep account of such costs, expenses and liabilities separately from all other BSC Costs.
3.2	In the event that the new subsidiary is successful in a tender exercise, that subsidiary shall

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	reimburse the tender costs to BSC Parties (via BSCCo) from the date PACo Tender Costs are first paid to PACo and ending a maximum of 5 years thereafter.
3.3	The Board may, in its absolute discretion, resolve to write off any loan or credit provided to a new subsidiary for tender costs which relate to an unsuccessful tender exercise.
3.4	Subject to BR 3.3, Trading Parties shall be entitled to recover Aggregate Tender Costs in accordance with BR3.2 and their respective Main Funding Shares at that time.

BR4

The BSCCo Board must ensure that bids to expand ELEXON vires must satisfy the P390 conditions

4.1	<p>BSC Section C must be amended to allow the ELEXON Board to pursue suitable opportunities subject to the meeting of conditions in BR4.1.</p> <p>The Board must satisfy itself that any opportunity to expand ELEXON's activities meets the following conditions:</p> <ol style="list-style-type: none"> 1. Activity must be related to the UK and/or the Republic of Ireland 2. Activity must be related to the gas, electricity, heat and/or transport sector 3. Activity must be linked to core competencies 4. BSC Parties should benefit from any diversification 5. The arrangements should not place disproportionate risk on BSC Parties 6. Standards of service under the BSC should be maintained 7. ELEXON's BSC role does not give it any undue competitive advantage in a contestable activity
4.2	The ELEXON board shall assess a given opportunity against the criteria in BR4.1 and decide how to proceed. If the Board is not satisfied that the conditions have been met then it shall not pursue that opportunity.
4.3	<p>Section C must be amended to included the following restrictions which shall apply to any opportunity which the Board has decided to pursue:</p> <ol style="list-style-type: none"> 1. Cost at risk (preparation and bid costs) in any year must be no more than 1% of that year's approved budget 2. The total cost for internal and external resources required for the bid must be capped at £100k.

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	<p>This amount is index-linked to inflation</p> <p>3. Other than as explicitly permitted by the BSC, there must be no cross subsidy from ELEXON to non-BSC activities</p> <p>4. If successful, expenditure prior to start of activity has to be repaid within 5 years of start of ELEXON providing tender costs to the Permitted Affiliate</p>
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BR5	
The costs of each bid shall recorded and reported back to BSC Parties	
5.1	As soon as reasonable practicable after it has been notified of its success or not (as the case may be) in a tender exercise, a permitted affiliate will submit a statement of its costs incurred in accordance with paragraph 3.2.1 to BSCCo.
5.2	BSCCo will notify the Panel, the Authority and Parties whether or not it has been successful in a tender exercise as soon as reasonably practicable after the permitted affiliate is entitled to publish that information.
5.3	As soon as reasonably practicable after receipt of the statement, BSCCo shall determine the aggregate tender costs and, if the tender has been successful, the recovery share for each Trading Party and provide its own statement of account to the Panel, the Authority and all Parties (excluding commercially sensitive information).
5.4	BSCCo will provide an annual summary of the tender costs until such time as the costs are repaid or written off.
5.5	Tender costs will be subject to a statutory audit and such findings shall be reported to the Panel and Parties.

BR6	
Consultation with interested parties prior to decision to bid	
6.1	Before taking a decision to bid for a new non-BSC activity, the ELEXON Board shall seek comments from Parties, the Panel and interested third parties
6.2	Parties will be allowed at least 10 Working Days to provide comments to ELEXON
6.2	In seeking comments, the Board shall provide Parties, the Panel and interested third parties with information on the nature and scope of the activity which it is interested in but shall not be required to disclose any information that is confidential to third parties or which ELEXON reasonably regards

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	as being a commercially sensitive element of its own proposition
6.3	ELEXON must seek comments from Parties, the Panel and interested third parties before incurring material cost.
6.4	ELEXON will send as much notice as is reasonably practicable to Parties, the Panel and interested third parties informing them that it intends to, or may intend to, seek comments under paragraph 1
6.5	ELEXON will publish a summary of the comments received.
6.6	ELEXON will publish guidance on the consultation process e.g. steps/indicative timescales

BR7

Window for Ofgem decision on expansions to ELEXON vires

7.1	<p>As soon as reasonably practicable after receipt of the comments referred to in BR6, BSCCo shall send to the Authority:</p> <ul style="list-style-type: none"> • a copy of the consultation comments, including any marked as confidential • a summary of BSCCo's assessment against the conditions referred to in BR4 • an invitation to consider PACo's proposed Permissible Activity Tender for the proposed PACo role ("Request for Permissible Activity Consent").
6.2	<p>The Authority may no later than 15 Business Days after receipt of the Request for Permissible Activity Consent in writing:</p> <ul style="list-style-type: none"> • reject BSCCo's Request for Permissible Activity Consent; or • inform BSCCo that it will communicate its decision and, having regard for the timelines applicable to the Permissible Activity Tender, provide a date by which such decision will be made, such date to be no later than 10 Business Days from the date.
6.2	If no response is received by BSCCo the Authority shall be deemed to have provided its consent to PACo's proposed Permissible Activity Tender.

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