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for energy consumers

Michael Gibbons
c/o Elexon Limited
4th Floor
350 Euston Road
London
NW1 3AW

Direct Dial: 0203 263 2738
Email: Nadir.Hafeez@ofgem.gov.uk

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Dear Michael,

Authority decision to 'send back' BSC modification proposal P390 'Allowing extensions to ELEXON's business and activities, subject to additional conditions'

On 21 May 2020, the BSC Panel submitted a Final Modification Report (FMR) for BSC modification proposal P390 'Allowing extensions to ELEXON's business and activities, subject to additional conditions' (P390) to the Authority.

We are unable to form an opinion on whether P390 should be approved based on the submitted FMR and associated documentation. Therefore we are sending the FMR back to industry for further work.

We note the changes to paragraph 10.2.1¹ in the P390 draft legal text, which explicitly acknowledge that if ELEXON transfers, leases, licenses or lends any data or information to a Permitted Affiliate, it must do so on arm's length and commercial terms. The proposed changes to this paragraph explicitly recognise that ELEXON could share data and information with Permitted Affiliates. The FMR does not explain when and how other third parties could secure such access. In the absence of this explanation, we are unable to form a view on the effect of these changes and the extent that they support the intent of the

¹ <https://www.elexon.co.uk/mod-proposal/p390/>

proposal. We believe that consideration should be given to these potential consequences, including whether any further mitigations are required.

We also note a discrepancy between the original wording of competition condition (g) stated in the FMR and used by the Workgroup and that contained in the proposed legal text in paragraph 4.1.2. We view the legal text wording of Condition (g) as weakening the intent and scope of the original wording found in the FMR. We find ELEXON's previous attempt to explain the change in wording unsatisfactory. We welcome further consideration and, if necessary, amendment to the proposed legal text on this point.

Therefore, we direct the BSC Panel to revise the FMR and legal text to explain and clarify the effect of the changes in the legal text paragraph 10.2.1 and 4.1.2.

After addressing the issues above, and revising the FMR accordingly, the BSC Panel should re-submit it to us for decision as soon as practicable.

Yours sincerely,

David Hall

Head of Code Governance

Signed on behalf of the Authority and authorised for that purpose