

Maxine Frerk  
By E-mail to: [industrycodes@ofgem.gov.uk](mailto:industrycodes@ofgem.gov.uk)

26 June 2015

Dear Maxine,

### **Further review of industry code governance – ELEXON response**

ELEXON is the code administrator responsible for managing the balancing and settlement arrangements set out in the Balancing and Settlement Code (BSC). We welcome the opportunity to comment on Ofgem's open letter concerning a further review of industry code governance.

Efficient and effective industry code governance facilitates the timely evolution of the market and supports competition.

Industry codes are multi-party contracts. They have been developed over time to support a technical industry and, as multi-party agreements, they detail a range of important industry obligations, rules and processes<sup>1</sup>. Such rules, requirements and technical specifications must be clear and unambiguous. We remain mindful that amendments to these industry codes can have significant commercial implications for parties that are obliged to sign up to them as well as service providers to these signatories and downstream customers who may see savings or additional costs arising from changes to the codes.

It is important that all stakeholders have the opportunity to take part in the processes that underpin the evolution of these multi-party agreements. We believe that effective industry code governance must provide for such inclusivity while delivering an efficient process founded on common principles that enable changes to be assessed impartially. This is a significant challenge in the face of the unprecedented level of change currently facing industry parties, including the roll-out of smart metering, introduction of new low-carbon technologies, demand side flexibility and the evolution of European regulations.

We note that industry code governance is one of the areas being considered by the Competition and Markets Authority (CMA) as part of the ongoing energy Market Investigation Reference (MIR). We have supported the CMA by providing it with information and expertise throughout its investigation. Most recently, we have provided comments<sup>2</sup> on the CMA's updated issues statement<sup>3</sup>, many of which are particularly relevant here.

We set out our general considerations in respect of the matters raised in Ofgem's open letter below. More detailed observations are attached in appendices A and B. The views expressed in this response are those of ELEXON Ltd, and do not seek to represent those of the BSC Panel or Parties to the BSC.

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<sup>1</sup> Such provisions range from metering and communication requirements, registration rules and network access provisions to energy volume allocation arrangements, associated pricing calculations and other charging structures.

<sup>2</sup> [https://assets.digital.cabinet-office.gov.uk/media/551bd51ae5274a142e000473/Elexon\\_UIS\\_response.pdf](https://assets.digital.cabinet-office.gov.uk/media/551bd51ae5274a142e000473/Elexon_UIS_response.pdf)

<sup>3</sup> [https://assets.digital.cabinet-office.gov.uk/media/54e378a3ed915d0cf7000001/Updated\\_Issues\\_Statement.pdf](https://assets.digital.cabinet-office.gov.uk/media/54e378a3ed915d0cf7000001/Updated_Issues_Statement.pdf)

**Q1: Have the Governance Changes introduced under CGR1 and CGR2 been effective in improving the current arrangements. In particular considering the efficiency and effectiveness of code change, the ability for large scale reform to be implemented and the accessibility of the arrangements for smaller/newer participants and consumer representatives?**

The Significant Code Review (SCR) process has enabled Ofgem to initiate large-scale reform in a number of areas but it has not speeded up change. The process is extended in that, once the conclusions of an SCR are published, any proposed changes then go through the various code modification processes. We believe there are more efficiencies to gain from considering how these mechanisms could better interact.

In general we believe that the Code Governance Review has been effective in creating a more consistent set of change provisions among industry codes. While the specific details of certain aspects of processes set out under each industry code may differ, the general principles and approach are more closely aligned than they were prior to the Code Governance Review.

We believe this has made interfacing with these processes easier for industry parties up to a point. However, the volume of changes being raised, assessed and implemented across multiple industry codes remains a challenge for all parties, particularly smaller organisations. We believe there is more that can be done to improve industry code governance so as to aid parties in engaging on industry change and better support the co-ordinated development and implementation of wider reforms.

We have provided more detail on the effectiveness of specific elements of the Code Governance Review in Appendix A, including comments in relation to:

- Significant Code Reviews;
- The Code Administration Code of Practice; and
- Provisions relating to Independence, Self-Governance and Send-Back.

**Q2: Do you agree that there is a need to consider further reforms to the industry code governance arrangements? If so, what issues do you consider should be addressed, and what possible solutions do you identify?**

We agree there is a need to consider further reforms to the industry code governance arrangements. In particular, we support a continued drive to simplify the industry code arrangements wherever possible. We see opportunities to improve the SCR mechanism and ways in which industry code governance might better support effective and efficient co-ordination of cross-code change which we acknowledge has been perceived, in some quarters, as slow and parochial.

The wide range of industry codes are serviced by multiple industry code panels and administrators and concerns regarding simplicity and change co-ordination are exacerbated by the multiple interfaces that parties must monitor if they wish to understand and engage across the industry codes. We believe that improvements to industry code governance could reduce this burden.

Appendix B provides more detail on these areas of concern.

Potential Solutions

Some improvements could be delivered through changes in approach and working practices without the need for substantive change in governance. These might encompass:

- Continued developments under the Code Administration Code of Practice in relation to cross-code change, including the identification of cross-code issues and better assessment via joint, cross-code working groups.
  - We continue to support improvements to operating practices under the Code Administration Code of Practice. Industry code panels have been consulting<sup>4</sup> on the introduction of Code of Practice Principle 13. If approved, this new principle will place an obligation on code administrators to communicate, coordinate and work with each other on modifications that impact multiple industry codes to ensure changes are progressed efficiently. We support the implementation of this Principle.
- A more strategic and pro-active approach from code panels including the provision of support to industry initiatives and regulatory programmes, identification of issues requiring resolution and active progression of changes where such changes have not been, or, in the relevant code panel's view, would be unlikely to be, raised by a code party.
  - The BSC Panel set out its strategic priorities in a [Panel Strategy](#) in November 2014. This strategy incorporates a [Strategic Work Programme](#) that addresses these priorities. Both the Strategy and Work Programme feed directly into the development of the annual BSCCo (ELEXON) business plan and inform the work of the BSC Panel, its Committees and ELEXON. The BSC Panel has also been exploring how it can be more proactive<sup>5</sup> in looking ahead to the evolution of the market and potential impacts on the balancing and settlement arrangements.
- Early engagement in the assessment of industry code changes by Ofgem so as to ensure that such assessment work meets the Authority's needs, thereby reducing the risk that subsequent work needs to be undertaken.
  - Given that the Authority makes the final determination in industry code changes it has an obvious interest in ensuring assessments consider any matters it believes are relevant. We believe that Ofgem should contribute to setting the terms of reference for assessing changes and engage with cost/benefit analysis undertaken by industry code change groups to reduce the risk that such analysis needs to be repeated (two of the examples of this are cited by the CMA in its codes paper). Early engagement by Ofgem might reduce the risk of delays and costs arising from such inefficiencies.
- Collation of an industry change programme to provide:
  - a forward work plan that encompasses cross-code change and enables more efficient planning and allocating of resources by code administrators and parties<sup>6</sup>; and

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<sup>4</sup> <https://www.elexon.co.uk/about/insights-consultations-cpcs/consultations/>

<sup>5</sup> This work has so far considered the [accountability, role and key functions](#) of the BSC Panel.

<sup>6</sup> We believe the current work being undertaken by industry code Administrators to improve co-ordination could facilitate the provision of such a plan. We have supported the BSC Panel in developing a [Strategic Work Programme](#) and we could develop something similar for all industry codes.

- a longer term change strategy that ties into the various domestic and European policy and change initiatives. This may be a matter for a cross-code expert group (see below).

Other, wider-ranging improvements might include:

- Establishing a cross-code expert group to consider changes: There are many market wide changes<sup>7</sup> that would benefit from a strategic, co-ordinated approach. A cross-code group, comprising experts on the various arrangements with a desire to work together to make things better, could provide expert design advice on issues relating to all industry codes. This might offer a singular mechanism for the industry to provide input on solutions to policy proposals at an early stage and develop a strategy for (or facilitate the design of) cross-code change.
- Revisions to applicable industry code objectives: We note that Ofgem has previously reviewed whether it is appropriate to align code objectives with its statutory duties and principal objective to protect consumers. We are disappointed that this will not be re-visited. We believe there would be benefit in providing for consistency across the relevant applicable industry code objectives and also between industry codes objectives and those of Ofgem. Such consistency could reduce the risk that complementary changes arising under different codes are not progressed as a result of being assessed against different sets of principles.
- Consideration of consumer impacts: We believe that the interests of consumers could be better met by ensuring that all code panels have consumer representation and by placing an objective on all code panels to consider the impacts on consumers arising from code changes.
  - The BSC Panel Membership includes expertise from consumer bodies<sup>8</sup>. Consequently, the BSC Panel benefits from insight in relation to consumer matters in the course of its deliberations. We also, wherever possible, seek to engage with consumer bodies such as Citizens Advice when changes are being assessed. However, we recognise that, like other organisations, engaging with the wide range of change across multiple codes is a challenge for consumer bodies. Where impacts on consumers are identified, we already comment upon these impacts in reports submitted to the BSC Panel and the Authority and we agree that there is merit in requiring that Modification Proposals and Reports contain a section on consumer impacts. However, we note that industry code panels are limited in their ability to take account of such impacts when assessing changes. We strongly believe that consumer impacts should be able to be considered by industry code panels and workgroups during the code modification processes and believe this would be greatly facilitated by reference to a new applicable objective, common among the codes.

Finally, we make the following observations in respect of the SCR mechanism.

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<sup>7</sup> E.g. The development and implementation of the European Network Codes, demand side flexibility, the shifting generation mix and micro-generation.

<sup>8</sup> Up to two Panel Members may be appointed by Citizens Advice or Citizens Advice Scotland

We agree that it is important for industry parties to continue to be closely involved in the development of any modifications arising from an SCR. We note that the SCR's initiated to date have included extensive consultation and assessment and resulted in high-level conclusions that have required more detailed design work to be completed under the relevant code modification processes. However, we question whether there is a need to undergo the full code modification process if the processes for defining, assessing and consulting on required changes can be accommodated in a co-ordinated fashion under the SCR. In particular:

- Complimentary industry code assessment under an SCR: It has been proposed that the forthcoming Ofgem programme on faster switching makes use of additional, Ofgem-led, industry expert groups to consider more detailed aspects of the potential changes including business process design, regulatory design, commercial elements and the overall delivery strategy. Considering such detail under the auspices of the programme, including the SCR, will only yield benefits in relation to industry code change if these matters are sufficiently defined and assessed via appropriate engagement with industry experts. Such engagement could mitigate the need for subsequent detailed assessment under the relevant industry code procedures. If this were to be the case, it might be possible for industry code modifications arising from an SCR to be considered directly by an industry code panel without further assessment<sup>9</sup>. We believe such an approach could be effective in reducing the risk of duplicated effort and extended timescales. Under the faster switching programme, additional input is planned to be sought from an External Design Advisory Group and we believe that such a group may share many of the features of our proposed cross-code expert group (see above) and could play a role in ensuring that any detailed assessment work conducted under an SCR meets the needs of industry code panels.
- Retention of code panel responsibilities for making recommendations: We strongly agree that industry code panels must continue to have a role in voting on recommendations associated with Modifications arising from SCRs. This is an important check and balance in the existing industry code governance<sup>10</sup>.
- No undue restrictions on the industry code assessment processes: We do not believe that Ofgem should be able to specify a timetable to be followed when directing the assessment or implementation of a code modification. Sufficient Authority oversight to control the timetable for change exists under the BSC and we believe these provisions should be consistent across industry codes. In particular we note that:
  - Ofgem is in control of the timetable for any assessment work taking place under an SCR and, as noted above, amendments in approach may enable a shorter Modification process under the relevant industry code governance if code panels and industry parties are fully engaged from the beginning of an SCR process and the conclusions appropriately defined.

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<sup>9</sup> In the case of the BSC this might mean that such Modification Proposals could proceed directly to the Report Phase.

<sup>10</sup> For example, the provisions of the Electricity Act offer the opportunity for Authority decisions to be appealed to the CMA in the event that the Authority approves a Modification which was recommended for rejection by the BSC Panel.

- Should the relevant industry code panel feel it has insufficient information to make a recommendation in respect of Authority directed Modifications, the code panel should submit the proposed Modification into an assessment process in the usual way, subject to the usual checks and balances and Authority oversight.
- The BSC already constrains the time available for assessing Modifications and the Authority may object to any extension above these defined limits (or any subsequent extension to an agreed timetable). The Authority must also approve any amendment to an approved implementation date.

**Q3: In addition to a post implementation review of our CGR reforms and potential changes discussed in this letter, are there any other areas of industry code governance that should be considered in this review?**

Our response<sup>11</sup> to the CMA's updated issues statement set out a number of general recommendations regarding industry code governance which we believe should be considered including:

- Consolidating code administration by appointing fewer code administrators: This would allow for industry parties to have a reduced number of interfaces for managing code activities and changes. It would also drive further consistency in code administration. We note, however, that the BSC would need to be amended before any organisation (including ELEXON) could provide (or seek to provide) other code administration services. We strongly believe it is essential to avoid further proliferation of code administrators and that any opportunities for consolidation should enable all existing code administrators to compete on equal terms otherwise the benefits of such competition are lost.
- Consolidating code governance arrangements: We acknowledge that any code consolidation activity represents a significant undertaking. However, we believe this could be achieved by:
  - Recasting and, where possible, simplifying industry codes into a small number of codes (we note that industry parties have made various suggestions in this regard in their responses to the CMA); and
  - Using the opportunity for planned cross-code changes to consolidate elements of the current codes. For example, Ofgem's project on next day switching will seek to centralise registration, which presents an opportunity, albeit that Ofgem has indicated that it would not use the project to deliver any further code consolidation. We believe it is likely that any shift in market arrangements (e.g. the introduction of greater demand side activity) would require significant code changes and would be a useful trigger for improvements or consolidation of codes.
- Streamlined Support: We believe there is merit in considering how a one stop shop or 'front of house' service could be implemented to ease new entrants' experience of industry code governance.

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<sup>11</sup> [https://assets.digital.cabinet-office.gov.uk/media/551bd51ae5274a142e000473/Elexon\\_UIS\\_response.pdf](https://assets.digital.cabinet-office.gov.uk/media/551bd51ae5274a142e000473/Elexon_UIS_response.pdf)

We support initiatives to improve industry code governance and we would be happy to discuss our response with you. If you would like to discuss any areas of our response, please contact me or Adam Richardson, Senior Market Advisor, on 020 7380 4117, or by e-mail at [adam.richardson@elexon.co.uk](mailto:adam.richardson@elexon.co.uk)

Yours sincerely,

Mark Bygraves  
CEO, ELEXON

List of enclosures

- *APPENDIX A: Detailed Comments on the Governance Changes introduced under the Code Governance Review*
- *APPENDIX B: Detailed Comments on the need for Potential Reforms to Further Improve Industry Code Governance Arrangements*

## Further review of industry code governance – ELEXON response

### APPENDIX A

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#### **Detailed Comments on the Governance Changes introduced under the Code Governance Review.**

In addition to our general observations, we would also make the following specific comments in relation to the changes introduced by the Code Governance Review as referenced in the letter.

#### Significant Code Reviews

Major changes considered under the SCR process require significant analysis and assessment and such work may result in matters being identified throughout the life-cycle of the SCR change process. Where these matters are significant, additional work may be required, extending the overall timescale for the SCR (and resulting changes).

The SCR's initiated to date have resulted in high-level conclusions. More detailed design work has had to be completed under the relevant code modification processes. The Electricity Balancing SCR resulted in two BSC Modifications (P304 and P305)<sup>12</sup> and each of these subsequently gave rise to further Modifications (P314 and P316)<sup>13</sup> raised by BSC Parties. The Assessment of these Modifications progressed quickly for such extensive, complex and multi-part proposals<sup>14</sup>. In developing the detailed solutions, additional work was involved in re-visiting aspects of analysis undertaken in the earlier SCR phase where the detailed elements of the solutions had yet to be developed and in respect of areas that had not been considered under the SCR itself<sup>15</sup>.

While there may be an aspiration to implement a given reform (as developed under an SCR) by a certain date, the actual implementation timescales will inevitably be driven by the detailed requirements established under the relevant code modification processes. We note that the implementation of Approved Modification P305 is scheduled for November 2015, seven months after Authority approval (April 2015). This represents a relatively swift implementation path for changes with extensive systems impacts across industry participants.

Aspects of code modification processes may be seen as important checks and balances given the potentially large commercial implications for code signatories (and others) that may arise from such changes. Indeed, following the detailed assessment under the BSC Modification process, the BSC Panel recommended that neither P304 nor P314 be progressed in isolation of the wider reforms encompassed in P305 and P316. Further, the provisions of the Electricity Act offer the opportunity for Authority decisions to be appealed to the CMA in the event that the Authority approves a Modification which was recommended for rejection by the BSC Panel.

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<sup>12</sup> <https://www.elxon.co.uk/mod-proposal/p304/> and <https://www.elxon.co.uk/mod-proposal/p305/>

<sup>13</sup> <https://www.elxon.co.uk/mod-proposal/p314/> and <https://www.elxon.co.uk/mod-proposal/p316/>

<sup>14</sup> Modifications P304 and P314 were raised in May and September 2014 respectively. Both were submitted to the Authority in October 2014 (with P314 benefiting from the analysis and assessment undertaken in respect of P304). Modifications P305 and P316 were raised in May and November 2014 respectively. Both were submitted to the Authority in March 2015 (with P316 benefiting from the analysis and assessment undertaken in respect of P305).

<sup>15</sup> For example, Ofgem developed a process for correcting participants' imbalance volumes following a Demand Disconnection event during the Electricity Balancing SCR. However, the P305 Modification Workgroup revisited and re-developed this methodology. Further, while the idea of a Reserve Scarcity Price (RSP) that would be derived from a Loss of Load Probability (LoLP) value was contemplated in the Electricity Balancing SCR, this thinking did not develop the LoLP function in detail. The SCR provided only high-level principles, leaving the detailed work to the Modification Workgroup.

Finally, we note that the SCR mechanism was introduced with the aim of facilitating major cross-code change, however, to date, the subject matter for SCRs has largely focused on reforms falling within single industry codes. We welcome Ofgem's desire to improve the SCR mechanism and believe that, without a modified approach, the extensive cross-code engagement required for wider issues (e.g. the forthcoming SCR on faster switching) will further increase the overall time taken to consider and ultimately implement such major reforms.

#### Code Administration Code of Practice

ELEXON played an instrumental role in the initial Code Governance Review and we continue to support the Code Administration Code of Practice (CACoP). We believe that a Code of Practice is a useful and valuable tool to establish and maintain appropriate commonality across industry code administration. We support the principles set out in the CACoP and the original aim of the Code Governance Review to facilitate convergence and transparency in code modification processes and we believe that its introduction has resulted in more standardised processes.

While we believe that the success of these CACoP provisions is a matter for comment by the relevant code users, we would make the following observations:

- We note that, upon implementation, much of the Code of Practice broadly reflected existing custom and practice under the BSC. This included the adoption of ELEXON's templates for code modifications as standard and the use of plain English summaries of code modifications.
- We are pleased that Ofgem welcomes the annual review of the CACoP by code administrators and we note that ELEXON has continued to lead on these cross-code reviews.
- We believe that Principle 1 (Code Administrators shall be Critical Friends) is an important principle. As guardians of the BSC Modification and change processes we continue to help users effectively frame and develop Modifications and we support the BSC Panel in setting Terms of Reference for Modification Workgroups. We have a range of ways for our customers to engage in the BSC change process to facilitate active debate. Above all, we are committed to remaining impartial and constantly seeking to ensure that all views are articulated and taken account of when changes are assessed.

Since the adoption of the CACoP we have built on the guidance embodied in the CACoP to facilitate engagement on industry code matters. This has included:

- Running, subject to demand, a Cross Code Energy Forum (supported by other code administrators) to enable industry parties to obtain updates on all relevant code modifications at one meeting.
- Providing, subject to demand, for BSC Panel meetings to be broadcast via webinar services.
- Attending and providing input to the Joint European Standing Group.
- Suggesting, via the Profiling and Settlement Review Group (PSRG), how processes could be modified and raising matters for consideration in relation to other industry codes to support a move towards half hourly settlement (given developments in the use of advanced and smart meters in the Non Half Hourly market).

- Providing support to industry groups reviewing data quality issues impacting Change of Supplier processes and taking a leading role chairing the industry Address Data Fuel Working Group established by Ofgem.

Since the CACoP built on many principles already embedded in the delivery of BSC change services, it is difficult to conclude that the implementation of the CACoP has resulted in material change in respect of the BSC change process. We report on the CACoP Key Performance Indicators on a quarterly basis in the Change Report to the BSC Panel. The [January 2015 Change Report](#) compares annual performance for 2012, 2013 and 2014.

We recognise the difficulties in measuring the performance of change processes where the number of repeatable events over a period is comparatively small. Furthermore, the complexity and relative importance of each change (as perceived by different parties) means direct comparison between changes and between industry codes is challenging. Nevertheless, we welcome views on appropriate and consistent measurement of Key Performance Indicators.

#### Independence, Self-Governance and Send-Back provisions

The Code Governance Review also introduced provisions relating to independence, self-governance and send-back.

We would note the following in relation to independence:

- ELEXON is independent of any part of the electricity industry and operates on a zero profit basis. The BSC requires that the Chairman of the BSC Panel is independent of BSC Parties. The Panel Deputy Chairman must be one of the independent Panel Members appointed by the Chairman. In addition, all BSC Panel Committee and Workgroup Chairs must be impartial (these chair roles are usually fulfilled by ELEXON). Further, consistent with existing BSC provisions, all BSC Panel Members, Panel Committee Members and Workgroup Members are required to act impartially and not be representatives of any class of party or parties, including those who may have appointed them. Consequently, the provisions introduced by the Code Governance Review regarding independence did not alter the existing BSC requirements or operating practices.
- In late 2014, the BSC Panel initiated a review of BSC Panel governance. The review has so far considered the [accountability, role and key functions](#) of the BSC Panel. The review is ongoing, however, the BSC Panel has published some initial conclusions, noting that its constitution shares many features of a trustee model: Panel Members are appointed for their specialist skills or knowledge and because they are representative of<sup>16</sup> those with a stake or interest in the balancing and settlement arrangements. Like trustees, Panel Members are not delegates of the parties or bodies that appointed them: they must act independently, in favour of the *common good* as viewed through the lens of the Applicable BSC Objectives.
- The BSC Panel has always provided rationale for its recommendations by reference to the Applicable BSC Objectives and it has continued to do so following the implementation of the

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<sup>16</sup> (rather than *representatives* of)

Code Governance Review. Similarly, BSC Workgroups continue to provide analysis to support their recommendations to the BSC Panel.

- We continue to support these requirements for impartiality and agree that it emphasises decision-making based on principles, particularly the relevant Applicable BSC Objectives.

We would note the following in relation to the Self-Governance process:

- The BSC has progressed 15 Self-Governance Modification Proposals since the Self-Governance arrangements were introduced on 31 December 2010. This equates to 27% of the 54 Modification Proposals raised since the implementation of the Code Governance Review.
- We believe the Self-Governance processes have worked well and that it is important that effective checks and balances remain in place to provide for the normal process to be followed should Self-Governance be felt to be inappropriate. This includes both the capability for BSC Parties to appeal a determination that a change should be considered under the Self Governance process and the capability for the Authority to reject an application for a change to be considered under the Self Governance process.
- While the Self Governance process grants more autonomy to industry code panels (and allows the Authority to focus its attention on material changes), it is not clear that the process provides for a significant reduction in the amount of time taken to assess and approve changes. Self-Governance Modifications, are generally simpler in nature than other types of change. The complexity and impact of Self-Governance Modifications is limited by the Self Governance criteria. Consequently, while the assessment timetable for Self Governance changes is generally shorter than other changes, this is driven by the (generally) simpler nature of Self Governance changes, rather than the process itself. The checks and balances built into the process (e.g. the 15 day appeal window) mean that the overall timescale for considering a Self-Governance change is similar to a normal change (where the Authority endeavours to provide a decision in respect of a Panel recommendation within 25 working days).

We would note the following in relation to the Send Back provisions:

- Since their introduction into the BSC, the Send-Back provisions have never been used<sup>17</sup>.
- We believe it is efficient to provide for send-back facilities to be used in the event that issues arise after a Modification has been submitted to the Authority where such issues can be addressed under the scope of the original proposal. These provisions avoid the need to reject a Modification and so avoid the delays and duplication involved in considering an equivalent change as a new Modification Proposal. However it is important that the send back provisions are used sparingly and in a limited fashion so as to avoid undue regulatory uncertainty.

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<sup>17</sup> The Authority requested that the BSC Panel re-consider the implementation date for Modification P272 'Mandatory Half Hourly Settlement for Profile Classes 5-8' under the separate implementation provisions set out in BSC Section F2.11.

## Further review of industry code governance – ELEXON response

### APPENDIX B

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#### **Detailed Comments on the need for Potential Reforms to Further Improve Industry Code Governance Arrangements.**

##### Simplification

We have been encouraged that the CMA has been considering the potential issues arising from the complexity of the code arrangements and the impacts for existing participants and new entrants.

As multi-lateral agreements concerning a technical industry, it is, perhaps, unsurprising that the industry codes are detailed and extensive. As we have noted, significant commercial implications may arise for code signatories (and other parties) from the application of (and changes to) the provisions set out in the industry codes. We believe that a balance must be found between the need for unambiguous rules, requirements and technical specifications and undue complexity. With this in mind, we support a continued drive to simplify the industry code arrangements wherever possible.

##### Cross-Code Co-ordination

The industry code change processes were designed for making incremental refinements and are not a natural fit for delivering large-scale, transformative change across multiple industry codes. The SCR mechanism was introduced to address this concern and we have made comments regarding the SCR mechanism elsewhere in our response.

Challenges can arise, however, where changes with implications for multiple industry codes (which are not large enough to warrant an SCR) are progressed under the standard industry code change processes. This is because the assessment of any given change is focused on the industry code under which the change was raised.

If cross-code impacts are identified in the course of considering a change, these can only be addressed by parties to the relevant code raising the required changes under the appropriate industry code. Such complementary changes are open to be raised, assessed and (if approved) implemented according to their own timescales, as overseen by the relevant code panel. Where changes are raised, we note that industry code panels are required to consider only those benefits arising in relation to their respective code's objectives. Consequently, there is a risk that changes raised under one code that facilitate benefits elsewhere may not be progressed if such changes do not facilitate the relevant code's objectives.

The speed of assessment for any given change tends to be dictated by the industry code panels' desire to ensure sufficient time is allowed for robust analysis supported by appropriate engagement with industry parties. The implementation timetable for changes tends to be dictated by the slowest (i.e. the party that lies on the critical path). Often, this is because it is felt to be less efficient to enforce a timetable which may lead to extensive non-compliance since the resulting disruption will undermine the realisation of benefits and further efforts will be required to tackle outstanding non-compliances and errors. Assessment and implementation can be further extended, subject to no objections being raised by the Authority, where issues are identified late in the process.

We believe that the absence of an overall forward vision to guide the development or prioritisation of effective cross-code change makes it harder to plan and prepare for the efficient assessment and implementation of change.

We note that the challenges of managing cross-code change effectively have been felt most recently felt in relation to changes associated with the move to Half Hourly Metering<sup>18</sup>.

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<sup>18</sup> Modification P272 'Mandatory Half Hourly Settlement for Profile Classes 5-8' was raised in May 2011. The Panel made its final recommendation (that P272 should be rejected) at its meeting on 13 December 2012. As part of its consideration of P272, the Authority issued a Regulatory Impact Assessment, under which it noted a minded-to position to approve the Alternative Modification. In February 2014, the Authority directed the Panel to consult on a revised Implementation Date for the P272 Alternative Modification. The Authority also recommended that the Panel defer this consultation until there was further clarity on the timetable for DCUSA Change Proposal (DCP) 179 'Amending the CDCM tariff structure'. The Panel delayed its consultation until August 2014 once greater certainty around the implementation approach for DCP179 had been obtained. In September 2014, the Panel recommended a revised Implementation Date for the P272 Alternative Modification of April 2016. This was agreed by the Authority. In March 2015, following representations from a number of BSC Parties, the BSC Panel sought a deferral of the Implementation Date to April 2017 to better accommodate Non Half Hourly to Half Hourly migration activities in light of the interactions between the changes being introduced under BSC Modification P272 and P300 'Introduction of new Measurement Classes to support Half Hourly DCUSA Tariff Changes (DCP179)'. The Authority rejected this application for a deferral in the absence of sufficient additional assurances that migration activity would be satisfactorily progressed by BSC Parties. Urgent Modification P322 'Revised Implementation Arrangements for Mandatory Half Hourly Settlement for Profile Classes 5-8' was raised by a BSC Party in April 2015. It sought to provide the assurances required by the Authority in respect of migration activities. In June 2015, the BSC Panel recommended that the P322 Alternative Modification be implemented and re-applied to the Authority for a 12 month deferral of the P272 Implementation Date from April 2016 to April 2017. More information is available on the [P272 page of the BSC website](#).