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Ofgem's proposals for SO regulatory framework – ELEXON comments

We welcome the opportunity to comment on your draft thinking for the regulatory framework for the future SO regime.

As you are aware, ELEXON (as 'BSCCo') is the Code Manager for the Balancing and Settlement Code (BSC). We are responsible for managing and delivering the end-to-end services set out in the BSC and systems that support the BSC and EMR settlement arrangements. When the 'BSCCo' was established National Grid was established as sole shareholder, however our governance and funding is designed in such a way that National Grid has no effective control and ELEXON remains independent of National Grid. We expect this to continue under the future SO arrangements, where the licence provisions relating to the BSC (Section C3 of the Transmission Licence) are transferred to the new SO licence. We are keen to understand the future regulatory framework and identify if there are any direct or indirect consequences for ELEXON.

We have highlighted below a number of observations that you may wish to consider when developing the new regulatory regime for the SO.

Expectations for delivery against the four roles identified for the SO

Ofgem has identified four roles for the Future SO. In identifying how successful the SO is in delivering these roles it will be important to understand what should be considered as 'business and usual' and what could drive additional value for stakeholders and consumers over and above BAU. This will help to clarify for users what the minimum expectations are but also how a for-profit but 'more independent' SO should earn additional revenues (or is allowed to retain funds). If for example, Ofgem (or stakeholders) believes there are roles and services which the SO should be better at delivering today (which presumably partly drives the need for separation), then should the SO be additionally rewarded for such improvements or is this improved level of service the minimum expected (even if this requires greater focus and resources than today). For example, if it is important that the SO's forecast information and level of accuracy is improved and is more transparent then some measure should be set which states what is expected today before any additional reward is permitted. Or, for example, if the quality of support and customer service associated with the SO's code management services currently falls below that expected of CACoP and Ofgem or users' current expectations, then should the SO not ensure the starting point for the more independent SO is to deliver a better service without the need for further incentive to bring the standard up? There is a risk otherwise that the SO could be rewarded for improvements to services which should have been forthcoming anyway from a reasonable SO.

Transparency of information

Ofgem highlights through Principle 1 the need to 'Support market participants to make informed decisions by providing user-friendly, comprehensive, and accurate information'. We agree with this principle. However we would observe that the SO should be incentivised to ensure information is published and provided using the most effective mechanism for publication that avoids duplication or fragmentation. For example the SO could meet this principle by publishing the data on its own website or by the SO providing links and signposts to related information that is published on other sites. In considering how it meets its transparency principle for new information, the SO should therefore consider the most appropriate vehicle for publication. For example the BMRS, which is an existing reporting platform for electricity summary data used by hundreds of market participants, is not managed by the SO yet the SO already uses direct feeds to the BMRS to publish certain of its data. The SO should be encouraged to utilise the BMRS (alongside its own sites as necessary) when considering where and how it is most efficient for industry and therefore of most benefit to consumers, to publish information and to bundle data items, rather than creating any duplication or fragmentation across sites.

KPIs for delivering change

The SO performance will need to be measured and we would support the development of a transparent set of KPIs to measure how the SO meets its 4 key roles. As part of its role in facilitating whole system outcomes and competitive markets we would expect to see KPIs related to delivery of change. As a provider of critical systems, users are reliant on the SO to deliver system changes in a timely, accurate and transparent manner often having to time their own system changes, and allocate their own resources, to coincide. A KPI in this area would create a positive incentive on the SO to deliver and allow users to develop their systems changes in a similarly timely and efficient manner.

Performance Panel

We recognise that the creation of a Performance Panel is one mechanism that allows the SO to understand user views and feedback. However we are not sure whether Ofgem needs to be so prescriptive in how the SO obtains feedback on performance. Focus on a Panel potentially excludes the wider stakeholder community. We would assume that the SO would need to have in place mechanisms for obtaining feedback either to share with Ofgem (or a Panel). The SO should be free to determine how best to achieve this feedback. We suspect that Ofgem would ultimately determine on compliance of the SO with its principles and KPIs and a Panel could simply be an additional level of unnecessary governance?

The role of the SO and other bodies in bringing forward change through industry codes

Ofgem notes the role played by NG in the industry codes and change processes. We would agree with your proposals that 'in order to facilitate competitive markets, the SO should be encouraging and actively driving forward competitive solutions and approaches wherever competition would drive efficiency and lead to consumer benefits'.

We believe that it is not just the role of NG to do this but all code bodies. ELEXON has been successfully identifying improvements and engaging with industry since 2001, demonstrating a best in class service for users and delivering change consistently to time and budget. ELEXON has also led on cross code initiatives and developed the first comprehensive cross code forward work plan.

We believe there would be benefit therefore in also allowing the Code Manager for the BSC, ELEXON, the ability to bring forward change to the BSC that seeks to deliver benefit to consumers. ELEXON are best placed to understand the potential for change under the BSC and how change can be implemented. We note that such a proposal is consistent with Ofgem's own proposals for code reform under the concept of a Code Manager. In addition other bodies are equally well placed as National Grid to co-ordinate cross code change across different codes.

Licence provisions for ensuring SO acts as a 'Code Manager'

In setting expectations for how the SO can ensure it facilitates change and improvements through the existing industry codes Ofgem should ensure the SO has the right tools at its disposal to achieve this. We would observe that the BSC has provisions to ensure the BSC Panel and ELEXON can ensure it can support effective change and these provisions are not always reflected in other codes. For example, ELEXON has obligations under BSC C3.1.1 to:

- *'provide or arrange the provision of such facilities, resources and other support as may be required by the Panel to enable the Panel or any Panel Committee or Workgroup to discharge its functions and responsibilities under the Code'; and*
- *'provide or arrange the provisions of facilities, resources and other support in connection with the procedures for modification of the Code in accordance with Section F'.*

BSC Section C3.1.3 goes on to say that the 'facilities, resources and support' that ELEXON may be required to provide to the Panel, Panel Committees or Workgroups include:

- *Meeting facilities;*
- *Provision of advice and expertise;*
- *Preparation of papers, reports etc; and*
- *'Where BSCCo so decides or the Panel specifically so requests, the services of external firms of advisers and consultants or the attendance at meetings of experts (and paying the fees and expenses of such advisers, consultants and experts)'.*

Ofgem should ensure the SO has the right to budget and plan for the necessary costs of supporting change. It is likely that other code bodies will need to ensure they can also fully support cross code changes.

Alignment to European requirements

It is important that in the future the obligations on, and guidance to, the SO (in particular the guidance and licence requirements associated with Principles 2 and 3) takes account of the European requirements related to balancing and balancing energy (subject always to the eventual Brexit impact).

For example, the following European Electricity Balancing Guideline Recitals (non-binding guidance) and Articles (binding) may be relevant, while also recognising that these requirements do not apply to ancillary services that are not also balancing energy services:

- Recital 8 and Article 18 relating to a level playing field between market participants, including demand-response aggregators, storage and distributions assets may require the distinction between Balancing Mechanism and non-Balancing Mechanism balancing services to be minimised in future. (The guidance provided by Ofgem in its recent letter on independent aggregators dated 24 July 2017 is already taking us in this direction).
- Articles 19, 20, 25 and 26, which, amongst other things, require priority to be given to the use of European standard balancing products before any GB balancing products are used for balancing, may require a re-consideration of licence condition C16 1(b)(ii) if "actions outside the balancing mechanism" are taken to include European standard products, as well as the traditional bilateral NGET balancing service contracts.
- Recital 13 and Articles 16 and 32, which restrict how balancing capacity can be procured and the form of balancing capacity contracts, may place restrictions on how the SO meets the

Principles. For example, long-term cost minimisation versus short-term cost minimisation will presumably be more difficult if the Article 16(6) requirement that the price of balancing energy bids shall not be pre-determined in balancing capacity contracts, although the SO may also request an exemption from this.

Therefore the above EU principles need to be reflected in the SO license.

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.

If you would like to discuss any areas of our response, please contact David Jones, Head of Strategy, on 020 7380 4213, or by e-mail at david.jones@elexon.co.uk.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Mark Bygraves".

Mark Bygraves
CEO, ELEXON