

# Report Phase Consultation Responses

## P365 'Enabling ELEXON to tender for the Retail Energy Code (REC)'

This Report Phase Consultation was issued on 14 February 2018, with responses invited by 28 February 2018.



### Phase

[Initial Written Assessment](#)[Definition Procedure](#)[Assessment Procedure](#)[Report Phase](#)[Implementation](#)

### Consultation Respondents

Respondent	No. of Parties/Non-Parties Represented	Role(s) Represented
Smartest Energy	1/0	Supplier
Bristol Energy	1/0	Supplier
Opus Energy	1/0	Supplier
Hudson Energy	1/2	Supplier, ECVNA, MVRNA
E.ON UK	1/1	Supplier, Supplier Agent
Drax Power	1/0	Generator
Npower	2/1	Generator, Supplier, Supplier Agent
EDF Energy	2/2	Generator, Supplier, ECVNA, MVRNA
Gemserv	0/1	Code Administrator

Question 1: Do you agree with the Panel's initial unanimous recommendation that P365 should be approved?

## Summary

Yes	No	Neutral/No Comment	Other
8	1	0	0

## Responses

Respondent	Response	Rationale
Smartest Energy	Yes	-
Bristol Energy	Yes	We believe that Elexon should be able to bid for the RECCo administrator role and this is in the interest of the industry as a whole as it would ensure that the development of the Retail Code is properly managed.
Opus Energy	Yes	Approval of this change would increase the pool of experienced Industry Code Administrators that can participate in the competitive process to appoint a body to administer the new Retail Energy Code (REC).
Hudson Energy	Yes	We believe that this Modification will better facilitate Applicable BSC Objective (d) as: <ul style="list-style-type: none"> <li>Sharing the fixed costs of ELEXON across the REC service allows costs to the BSC Parties to be defrayed; and</li> <li>Participating in the process for the appointment of the REC administrator role will provide a view to BSC Parties of the competitiveness of ELEXON in delivering their existing obligations and be used to consider efficiencies.</li> </ul>
E.ON UK	Yes	-
Drax Power	Yes	We agree that P365 will better facilitate BSC objective (d) should Elexon be successful in their tender for the Retail Energy Code (REC) for the following reasons: <ul style="list-style-type: none"> <li>The sharing of Elexon's fixed costs across the REC service allows costs to the BSC Parties to be defrayed.</li> <li>Elexon's expert knowledge of the electricity industry mean they are ideally placed to administer the REC, acting as a single point</li> </ul>

Respondent	Response	Rationale
		<p>of contact and enabling synergies between the REC and the BSC.</p> <p>Whilst we see merits in Elexon administering the REC we support the £100,000 cap and believe the financial exposure of BSC Trading Parties should be minimised as much as possible.</p>
Npower	Yes	<p>We are supportive of ELEXON's desires to broaden their vires to allow them to tender for non-BSC work. We also believe there is industry benefit should additional participants enter the tendering process for the Retail Energy Code service provider.</p> <p>However, we do not feel that the modification better facilitates any of the BSC objectives on the basis that should be ELEXON be unsuccessful in their tender application then BSC Trading Parties will not gain any BSC related benefit Parties will in fact have collectively paid up to £100k without gaining any benefit. Therefore we don't believe that approval of this modification will in itself promote any further efficiency in the implementation of the balancing and settlement arrangements.</p> <p>In order for this modification to have a positive impact on the BSC objectives, specifically objective D, it would need to be much broader to allow the ELEXON board scope to investigate any opportunity which they feel would allow them to deliver BSC services in a more efficient way. This would of course need to be done in such a way that BSC Parties have security and control of costs.</p>
EDF Energy	Yes	<p>There could be small benefits against BSC objectives (c) and (d):</p> <ul style="list-style-type: none"> <li>Given that registration of individual meters to BSC parties is necessary to support competition between those parties under the BSC; that the proposed Retail Energy Code (REC) is intended to support effective operation of future registration processes; and that increased competition in procurement of REC services should improve the services delivered, then participation of the proposed RECASCo should improve competition under the BSC, better meeting BSC Objective (c), regardless of success of the proposed tender.</li> <li>If the proposed RECASCo is successful in</li> </ul>

Respondent	Response	Rationale
		<p>obtaining the role, there would be opportunity for some sharing of existing fixed BSCCo costs, improving the efficiency of delivery of balancing and settlement and better meeting BSC Objective (d). If RECASCo is not successful, costs will have been expended without benefit. The potentially unrecoverable cost is equivalent to less than 0.0002 £/MWh on BSCCo charges on production and consumption volumes.</p> <p>Overall, we think the relatively small expenditure can be justified against BSC Objectives.</p>
Gemserv	No	<p>The proposer and the BSC Panel agree that this change will impact relevant Applicable BSC Objective (d) in a positive way. However, Gemserv believes that <b>this change</b> does not impact <b>any</b> of the Applicable BSC Objectives in a positive way.</p> <p>Relevant objective (d), Promoting efficiency in the implementation of the balancing and settlements arrangements will not be impacted by the implementation of this change. This change only allows the Elexon to step outside its normal permissions and specifically provides a route by which it can decide whether to enter the procurement process. This does not promote efficiency as there are no requirements for Elexon to ensure or take the steps that might lead to an efficiency gain.</p> <p>To realise any efficiency gains for the BSC, there would need to be two further decisions. One that Elexon decides to tender for the REC role and remains in the process to the end and the other that it wins the bid. An efficiency gain can only be realised if the RECCo subsidiary provides a contribution to Elexon's fixed costs, which can only happen if Elexon win the bid. There is an assumption that the subsidiary will contribute. However, as the modification makes no reference to this, there is no guarantee that this will happen. There is also no indication of the order of the possible savings.</p> <p>If Elexon decides to tender, but does not remain in the process or does not win the bid, costs will be incurred. These costs will not be reimbursed to BSC Parties and will therefore, have a negative impact on efficiency. So, the efficiency implications, post the implementation of this</p>

Respondent	Response	Rationale
		<p>change, could be either positive or negative and are not predictable.</p> <p>Additionally, it is clear, that funding for any bid will be 'ring fenced' and capped. However, the resource for any bid is likely to come from Elexon's current pool. This either implies there will be a detrimental and distracting effect on Elexon's performance of its existing responsibilities under the BSC or that Elexon is operating inefficiently by having surplus capacity. These are both efficiency considerations that do not seem to have been considered by the BSC Panel.</p> <p>Whilst the BSC Panel may consider that enabling Elexon to enter the competitive process for the REC administrator role is for the 'greater good', this is not part of the BSC Panel's responsibilities. Therefore, it cannot be and should not be a consideration in making its recommendation.</p>

## Question 2: Do you agree with the Panel that the redlined changes to the BSC deliver the intention of P365?

### Summary

Yes	No	Neutral/No Comment	Other
6	1	1	1

### Responses

Respondent	Response	Rationale
Smartest Energy	No comment	-
Bristol Energy	Yes	-
Opus Energy	Yes	-
Hudson Energy	Yes	The redlined changes replicate those for P330 to enable Elexon to tender for the Gas PAFA role.
E.ON UK	Yes	-
Drax Power	Yes	With the appropriate changes, the BSC legal text developed under P330 'Allowing ELEXON to tender for the Uniform Network Code Gas Performance Assurance Administrator (PAFA) role' will enable Elexon to tender for the Retail Energy Code (REC) should the Board wish to do so.
Npower	Yes	-
EDF Energy	Yes/No	<p>Proposed Annex C-1 3.3.4 includes: <i>"Subject to the Panel's approval, such statement of account shall be final and binding in the absence of manifest error (provided that such error must be notified no later than six months following receipt of the statement of account, failing which the statement of account shall be a final determination for the purposes of the Code)."</i> Does this mean that if no error is notified within six months the statement shall become final and binding regardless of Panel approval?</p> <p>At C-1 3.4.5(a), we note the proposal that although the BSC Panel is consulted on appointment of the initial RECASCo directors, it is BSCCo that has power to appoint the chairman, and to appoint or remove directors thereafter. Does this conflict with the requirements of BSC Section C `7.5.1 <i>Subject to paragraph 7.5.1A [dormant subsidiaries], the board of directors of each Subsidiary of BSCCo shall at all times comprise the persons who are for the time being</i></p>

Respondent	Response	Rationale
		<p><i>Directors of BSCCo, and the company secretary of such Subsidiary shall be the person who is for the time being company secretary of BSCCo.'?</i></p> <p>At C-1 3.4.5(b)(ii) and (c), RECASCo does not need to itemise for BSC Parties any tender costs that it considers confidential and/or commercially sensitive, even after the tender process is completed. Only RECASCo and BSCCo will have this information. What reassurance will BSC Parties and the BSC Panel have that money has been spent appropriately?</p> <p>Annex X-1: The definition ""RECASCo": means a company duly incorporated in England and Wales ;" does not capture the principle of this being a company specifically to fulfil a particular purpose. It would be better to define it in terms of a subsidiary of BSCCo with the specific purpose of tendering for and, if successful, fulfilling the RECAS Role.</p>
Gemserv	No	<p>We note that there is no legal text that ensures any efficiency gain for BSC Parties by ensuring that the BSC's fixed costs are shared. Therefore, should Elexon win the tender, there is no legal protection for BSC Parties from subsidising the administration of the REC. As such, we believe that the legal text needs to be amended to ensure the legal protection for BSC Parties.</p>

### Question 3: Do you agree with the Panel's recommended Implementation Date?

#### Summary

Yes	No	Neutral/No Comment	Other
8	0	1	0

#### Responses

Respondent	Response	Rationale
Smartest Energy	Yes	-
Bristol Energy	Yes	-
Opus Energy	Yes	-
Hudson Energy	Yes	This is an enabling modification only requiring only text changes to the BSC.
E.ON UK	Yes	-
Drax Power	Yes	Upon approval, P365 will not have an immediate impact on BSC Parties. As such, there will be no preparation required and we do not foresee any issue with implementing P365 5 Working Days after determination by the Authority.
Npower	Yes	-
EDF Energy	Yes	
Gemserv	No Opinion	Nothing to comment.

Question 4: Do you agree with the Panel's initial view that P365 should not be treated as a Self-Governance Modification?

## Summary

Yes	No	Neutral/No Comment	Other
9	0	0	0

## Responses

Respondent	Response	Rationale
Smartest Energy	Yes	-
Bristol Energy	Yes	As stated this concerns the Governance of the BSC and should therefore be approved by the authority.
Opus Energy	Yes	This has material impacts.
Hudson Energy	Yes	This modification will amend the Code's governance procedure and therefore should not be a Self-Governance Modification.
E.ON UK	Yes	-
Drax Power	Yes	Since the solution of P365 will change the Code's governance procedure, it doesn't meet Self-Governance Criteria (a) (v).
Npower	Yes	-
EDF Energy	Yes	The impacts on BSC Parties are relatively small, but explicit confirmation of Authority support for potential expansion of BSCCo's activities to other regulated Code Administrative activities before proceeding seems sensible.
Gemserv	Yes	-

## Question 5: Do you have any further comments on P365?

### Summary

Yes	No
5	4

### Responses

Respondent	Response	Rationale
Smartest Energy	No	-
Bristol Energy	Yes	The Authority should be asked to ensure a decision is made before it seeks applications for the RECCo administrator.
Opus Energy	Yes	<p>Although we are supportive of the principle of ELEXON being able to tender for the REC, it is important that costs are controlled in order to ensure that benefits to the industry and consumers outweighs the cost.</p> <p>Two of the key reasons for our supporting this change are:</p> <ol style="list-style-type: none"><li>1) Without it, the pool of experienced Industry Code Administrators that can participate in the competitive process is limited; and</li><li>2) ELEXON's strong track record of Code Administration performance instils confidence that they would manage the required REC-related activities in an effective and efficient manner.</li></ol>
Hudson Energy	No	-
E.ON UK	Yes	<p>There are 2 elements that need to be considered as part of this consultation. Although we support this change there is an underlying question regarding how this change is in the interest of the end Electricity Consumer as it is their money that will end up funding this bid overall.</p> <p>Secondly we have a slight concern over the distraction this may cause within Elexon during and post the bidding process. Should Elexon be successful the interim requirement for staff to support the new area of the business may deter from Elexon's primary function.</p>
Drax Power	No	-
Npower	Yes	We would like to understand how the £100k anticipated cost of the tender was reached. We are supportive of a cap and do not believe that ELEXON should be given a blank cheque by

Respondent	Response	Rationale
		<p>Trading Parties to spend as much as they like. However, we feel it is important that ELEXON has sufficient funds to compete in the tender process and wouldn't like to see the £100k cap as being the reason ELEXON were unsuccessful in the tendering process. We would like to see the cap retained but it may well be prudent for ELEXON to have a contingency that can be accessed with agreement of Panel if that is needed for a successful tender.</p> <p>It would be good for ELEXON to publish a plan for all current BSC Parties so they can understand how this tendering process will be staffed without seeing a degradation to the services received.</p>
EDF Energy	No	-
Gemserv	Yes	<p>Our objections to this modification are summarised as follows:</p> <ol style="list-style-type: none"> <li>1. <b>Competition</b> - Gemserv believes that competition is the best way to incentivise efficiency and drive down costs and is therefore fully supportive of competition. If Elexon does wish to participate in competitive tenders it would be better advised to restructure appropriately.</li> </ol> <p>Elexon has acknowledged in its principal risks detailed within its 2016/2017 accounts, that</p> <p>"There is a risk that ELEXON's current vires limitations frustrate our ability to respond to growth opportunities in a timely and competitive manner such that ELEXON's strategic objectives are not achieved and over-time there is a diminution of ELEXON's role."</p> <p>The update indicated that the ELEXON Board would be giving consideration to how Elexon might adapt to deliver services changing energy landscape and that the experience had reinforced the difficulties in using Modifications to the BSC as a means of creating the opportunity for new services which were not envisaged by the BSC. The Elexon Board planned to give further consideration to the challenge.</p> <p>It is not acceptable for the BSC parties, that the monies received by Elexon in a 'not for profit' model, are used to both subsidise the bid process and potentially the bid (i.e. the price offered in the bid for the enduring</p>

Respondent	Response	Rationale
		<p>services). For the reassurance of all BSC parties and those in any competitive process in which Elexon might participate, Elexon's funding would need to be completely transparent.</p> <p>Obviously, any indication of subsidies would impact the BSC parties, which they might wish to address. There would also be an impact on other companies competing in a tender. These companies could then consider whether the playing field was 'level' and make a decision on whether to compete or withdraw from the process. For most companies entering into a procurement process, their own money is being placed at risk and they must consider carefully the level of the investment and the risks involved.</p> <p>If BSC parties are interested in making efficiency gains, it may be worth considering opening up some of the discrete responsibilities of the Code to competition to determine the appropriate cost levels and gain the comfort that the BSC is being run optimally.</p> <p>1. <b>Not meeting the BSC objectives</b> – This modification only enables Elexon to enter the procurement process for the REC role. This brings no efficiency gains.</p> <p>If Elexon enters the procurement process and either withdraws from the process or fails to win the bid, there will be a negative impact on efficiency, as BSC Parties will have funded the process and will not have the costs returned to them. If Elexon wins the bid, then the BSC Parties will have their monies returned to them. This will make the efficiency situation neutral and there will only be a positive impact on efficiency if Elexon share its fixed costs with the REC. This is neither required in this modification or specified in the legal drafting. Consequently, the relevant objective (d), Promoting efficiency in the implementation of the balancing and settlements arrangements is more likely to be impacted negatively and not positively.</p>

Respondent	Response	Rationale
		<p>None of the other relevant objectives would be impacted by this modification.</p> <p>2. <b>Risk to BSC parties</b> - We note that there have been two changes that have specifically targeted enabling Elexon to tender for particular roles. The first was change P330, which specifically targeted enabling Elexon to tender for the gas Performance Assurance Framework Administrator (PAFA) role and the second is this change, P365 for the procurement of the Retail Energy Code role. The effect of both changes is that the BSC bears the business risk of Elexon entering the procurement process. While it is proposed to cap the financial risk at £100,000, Elexon would only have to pay that money back if it wins the procurement. As such we do not believe the correct balance has been struck between the financial impact on the BSC of not winning the bid, and the likelihood of winning the bid. It follows that Elexon's approach to risk as a 'not for profit' organisation is very different from that of other organisations. If it overspends against its budget, or is unable to provide services for the charges indicated in any bid for the REC, the risk is borne by the BSC.</p> <p>3. <b>Liability to BSC parties</b> - following the implementation of P330 (Allowing ELEXON to tender for the Uniform Network Code (UNC) Gas Performance Assurance Framework Administrator (PAFA) role) Elexon were able to start the tender process, but withdrew from the process. In an update to the BSC Panel (265/10 – Panel Update on Gas Assurance) Elexon explained that a created subsidiary would have been unable to accept commercial terms around financial liabilities. It is therefore surprising that, almost a year later, that Elexon plan to use this same route of a modification to the BSC, putting at risk BSC parties' money for a non-certain gain. It is also possible that some BSC funding parties (and therefore Elexon's bid funders) will be involved in the REC procurement process, leading to a potential conflict of interest.</p>