

Issue 40: Review of Elexon Governance and Funding Arrangements for New Business Opportunities

Meeting Name BSC Panel

Meeting Date 14 April 2011

Purpose of paper For Decision

Summary

Issue 40 has been raised by E.ON UK following approval and publication of the BSCCo Business Plan for 2011-12. This paper sets out the progression route for Issue 40 which will be considered by the Governance Standing Modification Group. We plan to present a report on the issue to the Panel in June 2011. The Panel is invited to select an independent chairman for the Group as requested by the proposer of Issue 40.

This document is confidential. If you are expressly authorised by the owner or creator to receive it, you are entitled to read it but not to copy or disclose it to any other person. If you are not the intended recipient you are not entitled to read, use or disclose it and are asked to email communications@elexon.co.uk.

1. Background

The BSCCo. Business Plan 2011-12

The approved version of the BSCCo Business Plan 2011-12 can be found on the ELEXON website. The plan is in two parts - a Business Strategy describing our key activities for the coming year, and an Annual Budget setting out the associated costs. Under the terms of the BSC, the Business Strategy is approved by the BSC Panel and the Annual Budget is then approved by the BSCCo Board.

The Plan emphasises ELEXON's continuing commitment on ensuring excellence in delivering the balancing and settlement arrangements. It also sets out a vision for ELEXON to be a leader in the efficient transformation of energy markets by providing shared solutions to address common industry problems.

In this respect the Business Plan for 2011-12 is different from those that have gone before. It proposes activities that fall outside the traditional scope of ELEXON's remit and highlights the need for reforms of ELEXON's corporate structure to enable this.

The BSC Panel approved the Business Strategy at its meeting in March 2011.

Corporate Structure Straw-Man

ELEXON shared a potential governance model and corporate structure with industry during February and March 2011 in support of the Business Plan. The Panel has also encouraged ELEXON to continue to engage fully with the industry on its proposals. The proposer of Issue 40 notes that consideration of the Issue is one of the mechanisms which will facilitate this engagement. The proposer has requested that ELEXON's straw man be used to inform the considerations of the group.

2. Standing Issue 40

The Issue Group will consider a number of areas associated with the governance and funding of BSCCo. These arise from the specific concern that BSCCo is unable to pursue new business development opportunities as it is precluded from doing so under Section C 1.2.2 of the code. Issue 40 forms Appendix 1 of this paper.

3. Progression

Issue 40 will be considered by the Governance Standing Modification Group (GSMG) in accordance with the BSC (Section F 2.4.23). The approved Terms of Reference for the GSMG are published on the ELEXON website and currently make provision for the Group to consider issues raised by BSC Parties (paragraph 7.5).

Matters for Consideration

The Group will need to consider the core principles that should underpin potential governance and funding models and develop high-level options. The group should also comment on the impacts and benefits of these options.

At its meeting in March the Panel noted that the current governance model needed updating and that clear proposals on governance (including any necessary modifications) should be identified within three months. Both ELEXON and the proposer agree that it is important to progress this work accordingly.

Timetable

With this in mind we aim to progress issue 40 during April and May so as to report back to the Panel in June 2011. This timetable is subject to the availability of Group members and the Group Chairman (see below).

Chairmanship

The proposer has requested that that an independent Chair is appointed for the Group when it meets to consider Issue 40. It is the view of the proposer that the chair should not be an ELEXON employee or an existing contractor

working for ELEXON. Nor should the chair be an Industry Panel Member or an employee of a BSC Party or Party Agent.

The Terms of Reference for the GSMG (paragraph 2.1) confirm that chairman of the Group shall be an employee of ELEXON unless otherwise determined by the Panel. The Panel should consider if it wishes to appoint an alternative to chair for the Group.

Should the Panel wish to appoint a Chairman other than ELEXON for the group we have identified some guiding criteria to aid the selection process. These are set out in Appendix II for the Panel's consideration.

We have received a number of suggested chairman from industry members following publication of Issue 40. These suggestions are set out in a confidential attachment to this paper.

The Panel is invited to identify a shortlist of preferred chairman from these suggestions based upon the criteria set out above. We request that the Panel delegates authority to the Panel Chairman to appoint a chairman from the shortlist. ELEXON will engage with candidates on the shortlist to establish availability and put in place the appropriate provisions to enable the preferred candidate to chair the Group.

Costs

We envisage that there will be costs associated with the engagement of an independent Chairman for the Group. Paragraph 6.1.2 of the GSMG Terms of Reference notes that the Panel Chairman will be consulted and approval sought prior to progressing work which will incur costs greater than £10k. We do not believe that the costs associated with progressing this issue will rise above £50k. However, in this event we will seek the view of the Panel before progressing in line with the GSMG Terms of Reference.

4. Recommendations

We invite the Panel to:

- a) NOTE that Standing Issue 40 has been raised by E.On UK;
- b) NOTE that Standing Issue 40 will be considered by the GSMG;
- c) NOTE that we intend to bring a report on Issue 40 to the Panel in June 2011 subject to the appointment and availability of a chair for the Group;
- d) DETERMINE if it is appropriate for ELEXON to chair the Issue 40 Group meetings; or
- e) AGREE a shortlist of potential chairs for the Group if appropriate; and
- f) DELEGATE authority to the Panel Chairman for appointing an Issue 40 chairman from the agreed shortlist.

Appendix I – Issue 40

Appendix II – Guiding Criteria for selecting a chair of the Issue 40 Group

Attachment A – CONFIDENTIAL: List of Possible Chairs



For more information,
please contact

Adam Richardson

Change Management and

Panel Secretary

Adam.richardson@elexon.co.uk
020 7380 4117

**Appendix I - Issue 40****Review of Elexon Governance and Funding Arrangements for New Business Opportunities****Issue: 40***(mandatory by BSCCo)*

Submission Date: 29 March 2011

Description of the Issue: **BSCCo is unable to pursue new business development opportunities as it is precluded from doing so under Section C 1.2.2 of the code.**

The Governance Standing Group is asked to consider options for an appropriate governance framework to address the above Issue, including amongst other things;

- 1) The extent to which Elexon should be permitted to pursue new business development opportunities,
- 2) The process for setting budgets, authorising expenditure and ensuring effective accountability to BSC parties,
- 3) Funding arrangements and the extent to which costs and risks should be allocated to BSC Parties that benefit from new business developments,
- 4) How surplus income generated from new business development opportunities are used including (a) consideration of repayments to parties required to/choosing to fund such activities and/or (b) reductions to BSCCo charges,
- 5) The separate accounting and ring fencing of new business activities from existing BSC activities, and whether new organisation or ownership structures are required,
- 6) The respective roles of the Board and BSC Panel, the Transmission Company and Trading Parties for each of the points 1) to 5),
- 7) An appropriate regulatory regime.

Crafting a new governance regime that meets the need of a range of stakeholders is not a straight forward task. It is therefore important that the diversity of stakeholder views is reflected in the membership of the Standing Group and we would ask the Panel to facilitate this. Active engagement by Ofgem in consideration of the Issue will also be vitality important given changes to the Transmission licence and the regulatory regime within which Elexon operates, may be required alongside changes to the BSC.

It is envisaged that the Standing Group would consider and develop a number of viable governance proposals which could form the basis for one or more future modifications. As part of this process consideration should be given to the Elexon 'strawman' governance proposal, first presented at the February 2011 BSC Panel, alongside other viable options.

Given this Issue primarily focuses on Elexon and the future role and aspirations of that business it is proposed that chair of the Standing Group considering this Issue should not be an Elexon employee or an existing contractor working for Elexon. Nor should the chair be an Industry Panel Member or an employee of a BSC Party or Party Agent.

Details of the Proposer

Name: Colette Baldwin

Company: E.ON UK

Telephone number: 02476 181382

Email Address: Colette.baldwin@eonenergy.com



Appendix II - Guiding Criteria for selecting a chair of the Issue 40 Group

Ref	Guiding Criteria	Description
1	Independent of current BSC Governance	The chair should not be: <ul style="list-style-type: none"> a) an ELEXON employee or an employee of a BSC Agent b) an existing contractor working for ELEXON or a BSC Agent c) a BSC Panel member d) a member of a Panel committee
2	Independent of parties that fund BSCCo. or which are the subject of BSC governance	The chair should not be: <ul style="list-style-type: none"> a) an employee of a BSC Party or Party Agent b) an existing contractor working for a BSC Party or Party Agent
3	Independent of the decision-making process for changes that might arise from the issue	The chair should not be: <ul style="list-style-type: none"> a) an employee of Ofgem
4	No conflicts of interest arising from involvement in other organisations	The chair should not be: <ul style="list-style-type: none"> a) a member of another Industry Panel (e.g. the CUSC Panel) b) an employee / board member of other organisations working in the energy market, including those providing Code Administration services (e.g. National Grid, xoserv, Gemserve etc.)
5	Appropriate knowledge and experience	The chair should carry the necessary gravitas and be able to take account of different and competing views encompassing the needs of a range of stakeholders. It would be beneficial if the chair had an understanding and experience of: <ul style="list-style-type: none"> a) Corporate governance b) Corporate law and regulation c) Corporate risk and assurance regimes d) Funding and accounting practices