

By e-mail to: [energymarket@cma.gsi.gov.uk](mailto:energymarket@cma.gsi.gov.uk)

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31 July 2015

Dear Will

**ELEXON's comments on the CMA's Energy Market Investigation provisional findings report and notice of possible remedies**

We welcome the opportunity to comment on the CMA's provisional findings report and notice of possible remedies. As you are aware, ELEXON is responsible for managing the electricity balancing and settlement arrangements as set out in the Balancing and Settlement Code (BSC). We are independent of any part of the electricity industry and not for profit. We are pleased that we have been able to support the work of the CMA to date, through our submissions, data provision and attendance at a hearing, and we are keen to assist further if required.

We set out below (in Appendix A) a number of observations on those aspects of the CMA's provisional findings and possible remedies that are particularly relevant to the BSC and ELEXON. In general, the BSC already contains provisions that address many of the concerns raised in the report. For example, the BSC already requires that BSC Panel Members be impartial and consumer bodies (Citizens Advice and Citizens Advice Scotland) sit as members of the BSC Panel to provide their consumer expertise. However, we acknowledge that other industry codes may not contain these features and we support equivalent provisions being introduced across all industry codes.

In particular, we note the proposal that code administration and/or implementation of code changes should be a licensable activity.

We observe that the BSC is a product of the Transmission Licence, and so falls under Ofgem's regulatory remit. Given that the code administrator's role and functions form part of that BSC, it follows that the regulator has a general oversight of this. Indeed, the Authority is responsible for approving the appointment of the Panel (and ELEXON) Chairman and oversight is granted to the regulator through a range of other provisions. However, historically, the regulator has been cautious to intervene in BSC governance. For example, in recent discussions regarding the accountability of the BSC Panel, Ofgem noted that the BSC Panel (including its chairman) is accountable to the industry, rather than Ofgem, as it is on the industry's behalf that the Panel undertakes its various functions.

Nevertheless, Ofgem already has extensive oversight of the BSC change process including powers that can dictate the pace of BSC change. These provisions mean that the BSC Panel must make its final determinations regarding a BSC Modification between 2-8 months from the date on which the Modification was raised unless the Authority is satisfied that variation is required due to the complexity, importance or urgency of the change. The Authority can, at any time, request that the Panel re-prioritise Modifications, and amend timetables for the development, assessment and implementation of changes.

The BSC also enables the Authority to direct National Grid (the licence holder) to step in to deliver the BSC Modification process where ELEXON (or the BSC Panel) has failed to comply with the Modification procedures or any Authority direction in relation to the Modification procedures.

With this in mind we do not believe that further regulatory oversight under the terms of a licence would provide material benefits compared to the status quo under the BSC and we believe equivalent oversight provisions should be implemented across all industry codes. We offer further details on these existing oversight provisions in the Appendices to this letter.

Further, we believe that our funding arrangements (which see our costs passed directly on to BSC Parties) and our not-for profit status, supports our delivery of impartial services in line with our obligations. We are concerned that this may be jeopardised should we be directly accountable to Ofgem under the terms of a licence. We are also concerned that the use of sanctions (e.g. penalties) imposed under a licence needs careful consideration and may not be compatible with our funding arrangements as a not-for profit entity.

We strongly believe that any competitive process for code administration services must enable all existing code administrators to compete on equal terms and, specifically, that the existing restrictions on our participation in any competitive process need to be removed otherwise the benefits of such competition are lost.

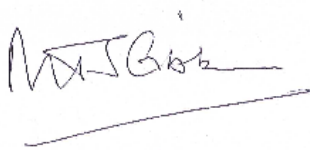
We note that, separately, Ofgem is considering a further review of industry code governance<sup>1</sup>. Many of the comments we have provided in our response<sup>2</sup> to Ofgem's proposed review are relevant to the CMA's findings regarding industry codes. We have reflected these observations here.

We also have a number of points of correction arising from the provisional findings report and its supporting material. We have included these corrections in Appendix 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.

We would be happy to discuss our response and will continue to support the CMA in its work. If you would like to discuss any areas of our response please contact 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,



Michael Gibbons CBE  
Chairman, ELEXON

List of enclosures

*Appendix A - Comments on the provisional findings report and notice of possible remedies*  
*Appendix B - Corrections and Clarifications*

<sup>1</sup> <https://www.ofgem.gov.uk/publications-and-updates/open-letter-further-review-industry-code-governance>

<sup>2</sup> <https://www.elexon.co.uk/wp-content/uploads/2015/06/Further-review-of-industry-code-governance-ELEXON-response.pdf>

## ELEXON's comments on the CMA's Energy Market Investigation provisional findings report and notice of possible remedies

### Appendix A

#### Observations on the absence of locational prices for transmission losses (Remedy 1)

ELEXON notes that the proposed remedy (Remedy 1) seeks to introduce new licence conditions to require locational pricing for transmission losses. We understand that consequential amendments to the BSC would then need to be made to introduce a cost-reflective charging mechanism, for example, in the form of variable Transmission Loss Factors (TLFs) that vary by season and by zone.

We believe, however, that the references to interconnectors and distribution licences may not be relevant, or may need further clarification. This is because:

- losses in the transmission system are dealt with separately from losses incurred in the lower voltage distribution networks; and
- all Interconnector Balancing Mechanism Units<sup>3</sup> (BMUs) have been exempt from the allocation of transmission losses<sup>4</sup> since the implementation of Modification Proposal P278 'Treatment of Transmission Losses for Interconnector Users'<sup>5</sup> in 2012.

Modification P278 was required to comply with European legislation<sup>6</sup>. The CMA references the possibility of market splitting between Scotland and England and Wales under European law in relation to locational prices for transmission losses. It notes that 'even if market splitting might require a change to the identity of the supplying unit (no longer a specific plant, but instead an interconnection point), it would still require an adjustment for transmission losses'<sup>7</sup>.

We consider that, in the context of market splitting, any implementation of locational prices for transmission losses would need to take account of the increased and increasing legal requirements being driven by the introduction of European Network Codes and legally-binding Guidelines. Additionally, any implementation should consider the requirements of, at least, European Regulation no.714/2009.

We therefore anticipate the need for further analysis in relation to such changes. As the CMA has noted, previous Modification Proposals have led to extensive analysis on locational prices for transmission losses. For example, Modification Proposal P229 'Introduction of a seasonal Zonal Transmission Losses scheme'<sup>8</sup> was raised in 2008. Analysis identified a wide range of impacts before the proposed and alternative solutions were submitted to the Authority in March 2010, eighteen months ahead of the Authority determination in September 2011. We welcome the CMA's observations that the analysis conducted under Modification P229 was comprehensive and robust. We would provide support to the development and assessment of any such BSC Modification Proposals in the usual, impartial, way.

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<sup>3</sup> i.e. both those BMUs belonging to Interconnector Users and those belonging to Interconnector Error Administrators.

<sup>4</sup> They now have a fixed Transmission Loss Multiplier of 1.

<sup>5</sup> <https://www.elexon.co.uk/mod-proposal/p278-treatment-of-transmission-losses-for-interconnector-users/>.

<sup>6</sup> European Regulation no.714/2009: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0015:0035:EN:PDF>.

<sup>7</sup> Footnote 143, page 159 of the EMI Provisional Findings Report.

<sup>8</sup> <https://www.elexon.co.uk/mod-proposal/p229-introduction-of-a-seasonal-zonal-transmission-losses-scheme/>

### **Observations on settlement design and the absence of a firm plan for moving to half-hourly settlement (Remedy 13)**

As the CMA has noted, ELEXON (as a code administrator) has limited powers to lead or establish a plan for industry change and cannot, itself, raise Modification Proposals for the industry to consider.

Nevertheless, having recognised the challenges and potential benefits of Half Hourly (HH) metering in 2010, ELEXON pioneered work with industry and Ofgem in developing proposals for the evolution of settlement<sup>9</sup> and offered thought leadership on accommodating emerging technologies and markets<sup>10</sup>. The findings of the Profiling and Settlement Review Group (PSRG) work led a BSC Party to raise Modification Proposal P272 'Mandatory Half Hourly Settlement for Profile Classes 5-8'<sup>11</sup> in May 2011. However no similar proposals for subsequent work under the BSC have been forthcoming in relation to Profile Class (PC) 1-4 Metering Systems.

We echo the CMA's disappointment that, to date, no coherent plan for moving to half-hourly settlement for PC1-4 Metering Systems has emerged from the work of the PSRG, or any other forum. However, we note that, upon our recommendation, the BSC Panel has recently established the Settlement Reform Advisory Group (SRAG). The SRAG is a strategic body charged with investigating the potentially wide-ranging improvements to the balancing and settlement arrangements that may be needed to support the mandated rollout of smart meters and the introduction of new technology (such as storage and more prevalent embedded generation). Its terms of reference include:

- the development of proposals to enable the HH Settlement of customers currently in Profile Classes 1 to 4 on an elective basis; and
- the promotion of cross-code co-operation to remove identified barriers.

We believe that code administrators and code panels have a strategic role in working together to facilitate the delivery of such change. We comment more on these change planning and co-ordination matters below.

### **General observations on industry codes**

We remain mindful that amendments to industry codes can have significant commercial implications for parties that are obliged to sign up to them. Additionally there are impacts on service providers to these signatories and downstream customers who may see savings or additional costs arising from changes to the codes. It is therefore 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.

We agree with the CMA's observations that 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.

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<sup>9</sup> See the work of the [Profiling and Settlement Review Group](#).

<sup>10</sup> See ELEXON's thought leadership reports under '[Smart Grids – latest insights](#)'

<sup>11</sup> <https://www.elxon.co.uk/mod-proposal/p272-mandatory-half-hourly-settlement-for-profile-classes-5-8/>

While the CMA notes that code administrators currently have a limited role in facilitating cross code change we make the following general observations regarding code administration:

- Code Administration Code of Practice (CACoP) Principle 13: Industry code panels have recommended to Ofgem that Principle 13 be implemented in the CACoP. 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. This includes the identification of cross-code issues and better assessment via joint, cross-code working groups. We support the implementation of this Principle.
- Streamlined Support: We note the CMA's comments regarding the Cross-Code Electricity Forum (CCEF)<sup>12</sup> which was last held in October 2013, after which, demand for the forum fell away. The challenges faced by such a forum are similar to those associated with consolidating industry codes, that is: presenting a broad view of changes across multiple codes in a single session may mean that some attendees will find certain material of limited interest or relevance. We conclude that it is unlikely a single forum (such as the CCEF) could provide significant benefits. Nevertheless, we believe there is merit in code administrators implementing a one stop shop or 'front of house' service to ease new entrants' and existing participants' experience of industry code governance. One of the service's stated aims should be to facilitate smaller participant engagement in all codes and it could be used to facilitate management of a change pipeline. Such a service must be:
  - timely/of the moment;
  - able to embrace multiple engagement approaches;
  - able to disseminate and gather information at a range of levels of detail;
  - easy to navigate; and
  - marketed widely and accurately.
- Consolidating code administration: The CMA has observed that the actions currently being taken to facilitate cross-code modification 'simply seek to improve the coordination between parallel independent processes, but do not provide a formal overarching change mechanism which would allow change to be carried out through a single process administered by one entity'.<sup>13</sup> There are two distinct areas considered in this statement:
  - i) consolidation / homogenisation of code administration processes; and
  - ii) consolidation of code administration service provision.

Each code contains its own code administration provisions. While these varied provisions are generally aligned with the principles of the CACoP, we acknowledge that the details of each code process are different. Many of these detailed process elements could be further harmonised via modifications under each code. Alternatively, the industry change processes could be lifted from their respective codes and consolidated in a separate 'code

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<sup>12</sup> The Cross-Code Electricity Forum was established by ELEXON (supported by other Code Administrators) to enable industry parties to obtain updates on all relevant code Modifications at one meeting. The forum was advertised on code administrator websites and in ELEXON's weekly Newscast publication. Parties could attend this forum in person or via a webinar service.

<sup>13</sup> Paragraph 11.154, page 470 of the EMI Provisional Findings Report

administration code', perhaps by evolving the CACoP. Any harmonisation work should avoid undue complexity and seek to deliver processes that are simple in design and flexible enough to be pragmatic in application. Given code administrators' currently limited powers to raise changes, it is for code parties (and code panels) to ensure such harmonising changes are progressed.

We agree that consolidation of code administration services would allow for industry parties to have a reduced number of interfaces for managing code activities and changes. While code administration processes would (we assume at least initially) remain set out in their individual codes, consolidation of service provision would offer further consistency in how these separate processes were delivered. We note, however, that the BSC would need to be amended before any organisation (including ELEXON) could provide (or seek to provide) any code administration services in addition to the administration of the BSC. We strongly believe it is essential to avoid further proliferation of code administrators. Any opportunities for consolidation should enable all existing code administrators to compete on equal terms and the existing restrictions on our participation in any competitive process must be removed otherwise the benefits of such competition are lost.

While the considerations above focus on code administration, we note that the determinations and recommendations made in respect of individual changes (whether administered under a consolidated process or not) would still fall to distinct and separate industry code panels.

We note the CMA's view that risks are attached to self-regulation where industry has conflicting interests or lacks sufficient incentives to carry out changes. Furthermore, that it is possible that industry codes may become a barrier to pro-competitive change and/or innovation, if self-regulation fails to ensure that industry codes keep pace with market developments and wider policy objectives. We therefore welcome the CMA's conclusion that industry code panels have not used their powers to delay the development of modification proposals or favour a particular group of industry participants<sup>14</sup>.

This is important. The BSC and ELEXON are founded on principles of impartiality. While we acknowledge that this is not the case for all industry codes, under the BSC, all BSC Panel and Panel Committee members and chairs are required to be impartial. They must not act as representatives of the body or person by whom they were appointed. All members are required to provide a written undertaking to this effect prior to taking office. We support equivalent impartiality and independence requirements being implemented across all industry codes.

We also believe that additional measures could be put in place to better support the deliberations of industry code panels. These might include:

- Collation of an industry change programme: Code administrators could work with industry code panels, and other industry bodies, including DECC and Ofgem to develop a forward work plan that encompasses cross-code change. This could enable more efficient planning and allocation of industry resources. Such a change programme might also encompass a longer term change strategy tied into the various domestic and European policy and change initiatives. This may be a matter for a cross-code expert group. ELEXON has developed a forward work plan with the BSC Panel for the purposes of assessing the future change landscape that will impact the BSC.

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<sup>14</sup> Paragraph 96, Page 31 of Appendix 11.2: Codes and regulatory governance, of the EMI Provisional Findings Report,

- Establishing a cross-code expert group to consider changes: There are many market wide changes<sup>15</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 single 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.

Such measures would facilitate a more strategic and pro-active approach being taken by industry code panels<sup>16</sup> 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.

### **Observations on Remedy 18a - making code administration and/or implementation of code changes a licensable activity**

The proposed remedy contemplates amendments in relation to the regulatory oversight of code administrators and delivery bodies; the powers code administrators may need to better co-ordinate change; and the selection, financing and independence of code administrators and delivery bodies. We comment on each of these areas below.

#### Regulatory oversight

It is not clear to ELEXON that material benefits would arise from making the roles of code administration and delivery of code changes a licensable activity when compared to the status quo under the BSC. The CMA suggests that this remedy would give Ofgem the power to efficiently monitor performance of code administrators, give them directions and impose sanctions when appropriate that could:

- i) accelerate the process of developing changes to the codes; and
- ii) make the initiation and development of modification proposals more efficient.

We believe that, unlike other industry codes, the BSC already affords Ofgem and the Authority a substantive degree of oversight. In particular:

- Contrary to the CMA's provisional findings, the BSC *does* set time limits on its modification process and the Authority can effectively veto any proposed timetable over the limits set out in the BSC;
- These provisions mean that (unless the Authority is satisfied that variation is required due to the complexity, importance or urgency of the change) the BSC Panel must make its final determinations regarding a BSC Modification between 2-8 months from the date on which the Modification was raised. The Authority can, at any time, request that the Panel re-prioritise Modifications, and amend timetables for the development, assessment and implementation of changes. The last time the Authority issued such a direction was for

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<sup>15</sup> E.g. The development and implementation of the European Network Codes, demand side flexibility, the shifting generation mix and micro-generation.

<sup>16</sup> For example, the BSC Panel set out its strategic priorities in a [Panel Strategy](#) in November 2014. The strategy incorporates a [Strategic Work Programme](#) that addresses these priorities.



Modification P272, where it asked the Panel to extend the Implementation Date in light of changes being progressed in other codes<sup>17</sup>;

- The BSC enables the Authority to direct National Grid (the licence holder) to step in to deliver the BSC Modification process where ELEXON (or the BSC Panel) has failed to comply with the Modification procedures or any Authority direction in relation to the Modification procedures; and
- The CACoP also requires that code administrators provide metrics to the Authority (ELEXON provides this information each quarter via the Change Report<sup>18</sup> to the Panel).

We support equivalent oversight provisions being implemented across all industry codes. The specific provisions that set out this oversight are detailed Appendix B.

#### Powers to better co-ordinate change

We do believe, however, that there would be merit in granting powers to code administrators (and industry code panels) that could make the initiation and development of modification proposals more efficient (including within the context of cross-code modifications). The CMA suggests that this might encompass the setting up of working groups. We support this and suggest other powers might include the capability for code administrators to raise changes to their respective industry codes. Such changes would be considered by the industry under the usual processes and would have to demonstrate benefits in the same way as any other change in order to be recommended for approval. It would be important to ensure appropriate check and balances were in place so that changes were only raised by code administrators where there was an identified need and where it was clear that no change would be otherwise forthcoming. We believe that industry code panels would form a key part of such checks and balances.

A further extension of these powers might enable code administrators and industry code panels to raise changes in other industry codes. This might be limited, for example, to circumstances where such changes were needed to facilitate the development and/or implementation of changes under their own industry code.

#### Selection, financing and independence of code administrators and delivery bodies

Unlike other businesses that also provide code administration services, ELEXON is run on a not for profit basis. Our funding arrangements (which see our costs passed directly on to BSC Parties) enable us to operate independently from our shareholder (National Grid). We believe this is significant and that such arrangements facilitate the delivery of impartial services in line with our obligations. However, we are concerned that the use of sanctions (e.g. penalties) imposed under a licence needs careful consideration and may not be compatible with our funding arrangements as a not-for profit entity.

As noted elsewhere in our response, we strongly believe that any competitive process for code administration services must enable all existing code administrators to compete on equal terms and, specifically, that the existing restrictions on our participation in any competitive process need to be removed otherwise the benefits of such competition are lost.

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<sup>17</sup> <https://www.elexon.co.uk/wp-content/uploads/2012/02/Direction-to-BSC-Panel-on-Modification-P272.pdf>

<sup>18</sup> <https://www.elexon.co.uk/group/the-panel/>



## **Observations on Remedy 18b - granting Ofgem more powers to project-manage and/or control the timetable for the process of developing and/or implementing code changes**

As noted above, we believe that the current BSC provisions (which enable the Authority to limit the BSC Modification assessment timetable and request revised implementation dates) already deliver many aspects of this proposed remedy. However, we acknowledge that, unlike the BSC, other codes may not contain such controls and we support equivalent oversight provisions being implemented across all industry codes.

Other aspects of the proposed remedy contemplate Ofgem's involvement in code change processes and the existing Significant Code Review (SCR) mechanism. These are explored below.

### Early engagement by Ofgem

Given that the Authority makes the final determination in respect of industry code changes it has an obvious interest in ensuring assessments consider those matters it believes are relevant.

Early engagement in the consideration of industry code changes by Ofgem can help ensure that assessment work meets the Authority's needs, thereby reducing the risk that subsequent work needs to be undertaken. We believe that Ofgem should contribute towards 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. This revised approach could be adopted without the need to amend existing industry code governance.

### Improving the SCR mechanism

We note that the SCR's initiated to date have included extensive consultation and assessment and have 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 equivalent 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. We support early engagement in this regard and believe that 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>19</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

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<sup>19</sup> In the case of the BSC this might mean that such Modification Proposals could proceed directly to the Report Phase.

expert group (see above). For example, it 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 believe 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. It provides for a second body (the code panel) to review the benefits of any solution developed by Ofgem. It also provides, in certain circumstances, for industry parties to seek a second opinion from a subsequent body (the CMA)<sup>20</sup>. This helps to mitigate the risk that a single body (in this case Ofgem) develops and implements its own solutions without due reference to the views of impacted parties.
- No undue restrictions on the industry code assessment processes: As we have noted elsewhere, we believe that sufficient Authority oversight to control the timetable for change exists under the BSC and equivalent provisions should be applied consistently across industry codes.

### **Observations on Remedy 18c - appointment of an independent code adjudicator to determine which code changes should be adopted in the case of dispute**

We note that, by appointing and giving appropriate powers to an independent code adjudicator, this remedy aims to resolve disagreements between parties over code changes more quickly than is currently the case.

However, it is not clear if the proposal is:

- a) limited to only those changes where a disagreement has been formally raised; or
- b) to separate responsibility for economic regulation (Ofgem) from the oversight of all industry code change (the independent code adjudicator) on an enduring basis.

In the case of the former, we are not clear how this remedy provides material benefits over the existing governance which provides for industry code changes to be appealed to the CMA, where the Authority has approved a change that was recommended for rejection by the relevant industry code panel.

If it is the latter, we are not convinced that the proposed remedy would deliver material benefits in terms of independence, impartiality and industry know-how that are not currently available with Ofgem.

In either case, it is not clear how or why a new body would resolve disagreements between parties over code changes more quickly than is currently the case (either during, or after the development and assessment of the change). Further, an additional body may adversely impact coordination between industry code change governance, licence modifications and legislation.

### **General comments regarding Ofgem's duties and objectives (Remedy 16)**

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<sup>20</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.

We note the view of the CMA that changes made to Ofgem's statutory objectives and duties in the Energy Act 2010 may have led Ofgem to carry out inefficient trade-offs between competing objectives, which in turn might have led to decisions that adversely impact competition.

We do not seek to comment on the detail of the Energy Act 2010. However, we remain mindful of the well-documented trilemma facing the industry that requires emissions be reduced and energy prices to remain affordable, while maintaining security of supply.

We believe that these concerns remain real and relevant and that 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.

The BSC already contains provisions that enable consumer bodies (Citizens Advice and Citizens Advice Scotland) to sit as members of the BSC Panel to provide their consumer expertise. We believe that the interests of consumers could be better met by ensuring that all industry code panels have such consumer expertise and by placing an objective on all industry code panels to consider the impacts on consumers arising from code changes.

#### **General comments regarding Electricity Market Reform (Remedies 2a and 2b)**

We welcome the CMA's comments on Electricity Market Reform and the benefits of the competitive process. Our subsidiary, EMRS Ltd, will continue to support DECC in delivery of these new provisions under the terms of our service agreement.

## ELEXON's comments on the CMA's Energy Market Investigation provisional findings report and notice of possible remedies

### Appendix B

#### Corrections and Clarifications

##### Main Document

**Para 11.95** The text indicates that DECC's ability to influence the industry codes is concentrated in its power to designate the initial version of each industry code, with the result that once an industry code is formally designated DECC has no further ability to influence its content. However, the Secretary of State has directed amendments to the BSC under subsequent legislation, most recently in relation to EMR under powers contained in the Energy Act 2013<sup>21</sup>. (See also Appendix 11.2, Paras 22, 141-149 below).

##### Appendix 5.1

**A5.1, para 7** In Great Britain, the SO receives notification of only the physical position not the contractual position of each party one hour prior to operation.

**A5.1 para 40** The text could be misleading since the SO does not receive actual contract information. It might be clearer to say:

*"...In a process that can be thought of as a monetary reflection of the physical process of balancing, parties submit Final Physical Notifications to the SO up to gate closure. These are typically based on the contractual positions of parties: how much electricity each has bought or sold up to one hour ahead of a half hour balancing period..."*

##### Appendix 5.2

**A5.2 para 24** We assume that the text references the TLF parameter as the mechanism that provides for the allocation of differential transmission losses. However, it refers to this parameter being set to zero in 'National Grid's settlement systems' whereas it is actually held in BSC (settlement) Systems.

In the same section, the text notes that it is possible to change the current zero parameter 'to a value that varies by generator depending on the location of its plants'. While this is true, the solution proposed by the previous BSC losses Modifications would have applied a zonal losses allocation to both generators and Suppliers. We assume, from our understanding of the benefits described in the report, the proposed solution would apply to both generators and suppliers. We suggest the application of TLFs referenced in this paragraph should be clarified.

##### Appendix 11.2

**Paras 21, 83** The text notes that, with one exception under the UNC, Ofgem does not have a power to modify industry codes directly. However, we note that, under the

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<sup>21</sup> <https://www.elexon.co.uk/ord/ord005-electricity-market-reform/> and <https://www.elexon.co.uk/ord/ord006-electricity-market-reform-energy-intensive-industries/>

provisions of Condition C3 of NGC's Transmission Licence, and as reflected in Section F of the BSC, Ofgem has powers to:

- raise BSC Modification Proposals itself (in relation to the implementation of the Electricity Regulation or any relevant legally binding decisions of the European Commission or the Agency); and
- direct National Grid (as the licensee) to raise BSC Modification Proposals pursuant to Significant Code Reviews.

**Paras 22,141-149** The text indicates that DECC's ability to influence the industry codes is concentrated in its power to designate the initial version of each industry code, with the result that once an industry code is formally designated DECC has no further ability to influence its content. However, the Secretary of State has directed amendments to the BSC under subsequent legislation, most recently in relation to EMR under powers contained in the Energy Act 2013<sup>22</sup>. This is referenced in paragraph 141.

**Para 55** *Footnote 56:* The text indicates that the BSC Panel sets both the strategic direction of the BSC and establishes an annual budget. This is not correct. The BSC requires that the BSC Panel approve the strategy of BSCCo (the code administrator). However, it is the BSCCo Board (separate to the BSC Panel) that is responsible for establishing the BSCCo budget.

**Para 58** *Footnote 61:* The text suggests that the composition of an industry code panel is capable of modification via the self-governance modification procedures. The self-governance criteria set out in Condition C3 of NGC's Transmission Licence restrict the self-governance procedures being used for amendments that would have a material impact on the BSC governance procedures and modification procedures. We believe that any proposal to amend the composition of the BSC Panel would fail this self-governance test and so be subject to the normal Modification procedures that require approval of the Authority.

**Para 97** *Footnote 94:* While the BSC prevent more than one alternative being recommended to the BSC Panel, we would note that it does not prevent Modification Workgroups from considering multiple potential alternatives during the assessment of a BSC Modification. In practice, Modification Workgroups can (and do) explore a range of alternatives before recommending, in it their view, the single 'best' alternative.

**Para 99** The text indicates that only the CUSC requires that an independent chairman be appointed to lead each working group. It is important to state that the BSC contains clear provisions that require Modification Workgroup Members (as well as Panel Members) to act impartially (BSC Section F2.4.9). These obligations to act impartially extend to the Modification Workgroup chair who is a Modification Workgroup Member (BSC Section F2.4.7). The BSC Panel can (and does) appoint an employee of BSCCo (the code administrator) as the chair of a Workgroup. ELEXON, as BSCCo is an independent entity as discussed elsewhere in our response.

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<sup>22</sup> <https://www.elexon.co.uk/ord/ord005-electricity-market-reform/> and <https://www.elexon.co.uk/ord/ord006-electricity-market-reform-energy-intensive-industries/>

The text also states that the CUSC is also the only industry code that contains provisions that grant the code panel the power to remove a working group member who the code panel considers to be frustrating the development of a MP. However, Section F2.4.11 of the BSC confirms that the BSC Panel may replace any Workgroup Member if, in the Panel's opinion, such member is unwilling or unable for whatever reason to fulfil that function and/or is deliberately and persistently disrupting or frustrating the work of the Workgroup.

**Para 102**

The text states that all industry codes, with the exception of the BSC, require that each Modification Proposal be submitted to a period of industry consultation. This is incorrect. The BSC *does* mandate consultations for Modification Proposals. In some cases, it mandates *multiple* consultations. BSC Section F2.2.6 requires all Modifications in assessment are issued for comment. This is later clarified as a consultation in Sections F2.5.5 and F 2.6.5. Further provisions regarding consultation are set out in BSC Section F2.7.4 and BSC Section F3.2.1). The only exception relates to Modification Proposals which are granted Urgent status by the Authority but even these are normally consulted on under timetables recommended by the BSC Panel and approved by the Authority (BSC Section F2.9).

**Para 119, 123/4**

The text suggests that, because code administrators (or delivery bodies) are not licensees, Ofgem has limited powers to compel action. However, we believe that the BSC offers considerable powers of oversight to Ofgem and the Authority regarding the assessment and implementation of Modifications. In particular:

- The BSC *does* set time limits on the Mods process and the Authority can re-prioritise and veto any timetable over these defined limits. This is very important. The BSC requires that:
  - Non Urgent Modification proposals submitted to the Modification Secretary must be placed on the agenda of the next Panel meeting (Section F2.1.9). Urgent Modifications can be dealt with under accelerated timings.
  - “the Panel shall exercise its discretion such that...a Modification Report may be submitted to the Authority as soon after the Modification Proposal is made as is consistent with the proper definition and/or assessment and evaluation of such Modification Proposal, taking due account of its complexity, importance and urgency (Section F2.2.8); *and*
  - “Without prejudice to paragraph [F]2.2.8...the Definition Procedure [must be] no longer than 2 months; and the Assessment Procedure [must be] no longer than 2 months....unless the particular circumstances of the Modification Proposal justify an extension of such timetable (and provided that the Authority has not issued a contrary direction in accordance with paragraph 1.4.3 in respect thereof)” (Section F2.2.9); and
  - The draft Modification Report must be prepared and published for consultation within 15 days of a Panel decision to proceed to the Report phase and it must be placed on the agenda for the next following Panel Meeting after the mandated consultation (Section F2.7.4). In practice, given that the BSC mandates monthly Panel meetings (Section B4.1.1), this requires a Report Phase of no longer than 1-2 months.
- Further, the BSC affords the Authority clear oversight of Modification prioritisation and timetabling. Section F1.4.3 requires that the Panel comply

with any notice from the Authority to the Modification Secretary requesting the Panel:

- a) not to reject a Modification Proposal pursuant to paragraph 2.1.4; and/or
  - b) not to amalgamate Modification Proposals as set out in the Monthly Progress Report; and/or
  - c) to accord a different priority to particular Modification Proposals from that set out in the Monthly Progress Report; and/or
  - d) to amend the timetable for definition and/or assessment and evaluation of a Modification Proposal.
- Under the Send Back provisions (Section F2.7A) the Authority can direct the Panel to revise the implementation timetable and/or proposed Implementation Date(s).
  - More generally, any Implementation Date for an approved Modification may be extended or brought forward with the prior approval of, or at the direction of, the Authority (Section 2.11.7).
  - However, in all cases, BSCCo and the BSC Panel are obliged to give full and timely effect to an Approved Modification by the approved Implementation Date (BSC Section F2.11).
  - Importantly the BSC enables the Authority to direct National Grid (the licence holder) to step in to deliver the BSC Modification process where ELEXON (or the BSC Panel) has failed to comply with the Modification procedures or any Authority direction in relation to the Modification procedures (BSC Section F1.7).

#### **Para 128**

The text states that Modification P272 is an example of a Modification Proposal that qualified for 'urgent' status during the implementation stage. This is not correct. Modification P272 has never, at any stage, been approved as an Urgent Modification by the Authority. We assume that this paragraph is making reference to other, related, changes that have been raised in light of Modification P272. In some cases<sup>23</sup> these changes have been granted urgent status and such urgency has been associated with the requirements being introduced by Modification P272. We believe this should be clarified.

#### **Annex C**

The most recent version of the Code Administration Code of Practice is version 3.1. This was approved for use in late 2014.

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<sup>23</sup> Modification P322 'Revised Implementation Arrangements for Mandatory Half Hourly Settlement for Profile Classes 5-8': <https://www.elexon.co.uk/mod-proposal/p322/>