

Phase

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

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

This Modification seeks to enable ELEXON to participate in the process to appoint the Retail Energy Code (REC) administrator which is expected to occur in the near future.



The BSC Panel recommends **approval** of P365

This Modification is expected to impact:

- Trading Parties



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About This Document

This is the P365 Final Modification Report, which ELEXON has submitted to the Authority on behalf of the BSC Panel. It includes the Panel's full views the Panel's Report Phase Consultation. The Authority will consider this report and will decide whether to approve or reject P365.

There are three parts to this document:

- This is the main document. It provides details of the solution, impacts, costs, benefits/drawbacks and proposed implementation approach.
- Attachment A contains the approved redlined changes to the BSC for P365.
- Attachment B contains the full responses received to the Panel's Report Phase Consultation.

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Why Change?

Ofgem has indicated that in the near future a competitive award process will be undertaken to appoint a body to administer the new Retail Energy Code (REC).

Section C of the BSC currently precludes ELEXON from undertaking any business or activity which is not prescribed and provided for in the BSC. These restrictions prevent ELEXON from participating in any REC administrator appointment process.

Solution

This Modification proposes to amend the BSC to enable ELEXON to tender for the REC administrator role, should the ELEXON Board decide to.

Impacts & Costs

The central implementation cost to deliver the solution to P365 is £240. This is derived from one working day of implementation effort to deliver the document only changes as a result of the P365 solution.

Bid costs

P365 will impact the Trading Parties that fund BSC Costs. Trading Parties will initially fund ELEXON's bid costs. The funding will take the form of a grant or loan provided by the Balancing and Settlement Code Company (BSCCo) to the REC Administrative Services Company (RECASCo) (see page 5), on such terms as the ELEXON Board may approve, and will not exceed the sum of £100k.

In the event that ELEXON is unsuccessful, bid costs will not be repaid to Trading Parties. However, if successful, ELEXON's bid costs will be repaid. Furthermore, securing the REC administrator role will enable certain existing ELEXON overheads to be defrayed, reducing the ongoing charges paid by Trading Parties.

Implementation

P365 is proposed for implementation in an ad hoc document only release, five Working Days following determination by the Authority.

Recommendation

The BSC Panel unanimously believes that the P365 Proposed Modification better facilitates Applicable BSC Objective (d). The Panel's final unanimous recommendation is that this Proposed Modification should be **approved**.

Retail Energy Code

On 21 September 2017, Ofgem published their consultation '[Delivering Faster and More Reliable Switching: proposed new switching arrangements](#)'. The consultation proposed that the current code governance framework for switching is fragmented, with many processes and central systems operating differently for the electricity and gas markets.

Under the current code governance framework, switching arrangements and related central systems changes are primarily governed by:

- the Master Registration Agreement (MRA) for electricity; and
- the Supply Point Administration Agreement (SPAA) and the Uniform Network Code (UNC) for gas.

There are also some supporting elements of the switching process that are contained in other codes such as the BSC and the Distribution Connection Use of System Agreement (DCUSA).

Ofgem noted the opportunity that the switching programme provided to consolidate these into a more coherent and logical arrangement, and to form the new REC.

What is the issue?

Ofgem has indicated that in the near future a competitive award process will be undertaken to appoint a body to administer the new REC.

Section C of the BSC currently precludes ELEXON from undertaking any business or activity which is not prescribed and provided for in the BSC. These restrictions prevent ELEXON from participating in any REC administrator appointment process.

If not addressed these restrictions will:

- Limit the pool of experienced code administrators that are able to participate in the competitive process;
- Limit the full range of commercial/operating models from being evaluated;
- Increase the potential for further fragmentation in the provision of code administration services; and
- Limit the opportunity for ELEXON to further defray its costs to Trading Parties (it is noted that this final point is subject to successfully securing the REC administrator role).

Proposed solution

[P365 'Enabling ELEXON to tender for the Retail Energy Code \(REC\)'](#) was raised by Hudson Energy on 19 January 2018.

P365 seeks to enable the ELEXON Board to decide whether or not to bid for the role of REC administrator (and perform the role if the contract is awarded to ELEXON). This will be done via a separate not for profit subsidiary (RECASCo) which will be funded by ELEXON (through BSC Parties).

ELEXON operates on a not for profit basis, therefore if the ELEXON Board determines a bid should be submitted, the costs incurred in submitting a bid will be borne by BSC Parties. Any bid costs will be capped at £100k.

The proposed BSC changes ensure that ELEXON is ring-fenced from any enduring operational costs and risks associated with performing the role of REC administrator.

The changes proposed by P365 reflect the legal precedent introduced by approved Modification [P330 'Allowing ELEXON to tender for the Uniform Network Code Gas Performance Assurance Administrator \(PAFA\) role'](#), which enabled ELEXON to tender for the PAFA role.

Other non-BSC work administered by ELEXON

ELEXON has taken on non-BSC roles in recent years, namely the administration of the Warm Homes Discount Scheme and as the Settlement Services Provider for the Electricity Market Reform (EMR). Participation in both of these government schemes resulted from 'directions' from the Secretary of State, rather than via a Modification process. It should be noted that subsequent to the direction, the operation of the Warm Home Discount Scheme was secured through competitive tender.

Approved Modification P330

More recently, the ability for ELEXON to seek to become the Gas Performance Assurance Framework Administrator (PAFA) was the subject of Modification Proposal [P330 'Allowing ELEXON to tender for the Uniform Network Code Gas Performance Assurance Administrator \(PAFA\) role'](#) which was approved by Ofgem on 2 June 2016.

The proposed solution to this Modification Proposal repeats the implementation approach developed during the assessment of P330 and the arguments set out in [Ofgem's decision letter](#) where the detailed rationale behind their decision to approve P330 is set out.

Proposed solution

P365 proposes to use [BSC legal text developed under P330](#), but modified to reflect the REC administrator role, in this Modification Proposal.

The proposed solution to this Modification will require changes to the following BSC sections:

- Section C: BSCCo and its Subsidiaries, Annex C-1: Permissible Activities; and
- Section X: Definitions and Interpretation, Annex X-1: General Glossary.

At high level, the changes to Annex C-1 will:

- Establish REC administration as a Permissible Activity and establish the appropriate legal entity RECASCo;
- Detail the arrangements under which BSCCo may provide a loan or grant credit to RECASCo for the purposes of bidding for the REC administration role, together with the requirement for cost to be ring-fenced;
- Detail the arrangements for the repayment of any loan and what will happen in the event that RECASCo is unsuccessful in its bid; and
- Confirm the shareholder arrangements with RECASCo and its relationship with BSCCo.

At high level, the changes to Annex-X1 will include, but not be limited to, the following definitions:

- Aggregate RECAS (REC Administrative Services) Tender Costs;
- RECAS Tender;
- RECAS Tender Costs;
- RECAS Tender Recovery Period;
- RECASCo;
- RECASCo Board;
- RECASCo Shareholder; and
- RECAS Role.

Estimated central implementation costs of P365

The central implementation cost to deliver the solution to P365 is **£240**. This is derived from one working day of implementation effort to deliver the document only changes as a result of the P365 solution.

Indicative industry costs of P365

We are not anticipating any industry costs for the implementation of this Modification.

This Modification Proposal will impact the Trading Parties that fund BSC Costs. Trading Parties will initially fund ELEXON's bid costs. In the event that ELEXON is unsuccessful, bid costs will not be repaid to Trading Parties.

However, if successful, ELEXON's bid costs will be repaid. Furthermore, securing the REC administrator role will enable certain existing ELEXON overheads to be defrayed, reducing the ongoing charges paid by Trading Parties.

P365 impacts

Impact on BSC Parties and Party Agents	
Party/Party Agent	Potential Impact
Trading Party	<p>This Modification Proposal will impact the Trading Parties that fund BSC Costs. Trading Parties will initially fund ELEXON's bid costs. In the event that ELEXON is unsuccessful, bid costs will not be repaid to Trading Parties.</p> <p>However, if successful, ELEXON's bid costs will be repaid. Furthermore, securing the REC administrator role will enable certain existing ELEXON overheads to be defrayed, reducing the ongoing charges paid by Trading Parties.</p>

Impact on Transmission Company
None identified.

Impact on BSCCo	
Area of ELEXON	Potential Impact
None identified.	

Impact on BSC Systems and processes	
BSC System/Process	Potential Impact
None identified.	

Impact on BSC Agent/service provider contractual arrangements

BSC Agent/service provider contract	Potential Impact
None identified.	

Impact on Code

Code Section	Potential Impact
Section C	Redlining amendments as proposed by the solution to this Modification Proposal.
Section X	

Impact on a Significant Code Review (SCR) or other significant industry change projects

The Proposer requested that this Modification be exempt from the SCR process. Ofgem was notified that this Modification was to be raised on 19 January 2018 and that it was ELEXON and the Proposer's view that this Modification should be a SCR Exempt Modification Proposal. Ofgem confirmed on 2 February 2018 that this is a SCR Exempt Modification.

Impact on Consumers

ELEXON agrees with the Proposer's view that the solution to this Modification does not have any direct impacts on consumers.

Impact on the Environment

ELEXON agrees with the Proposer's view that the solution to this Modification does not have any direct impacts on the environment.

5 Implementation

Recommended Implementation Date

The Proposer recommends an Implementation Date for P365 of **five Working Days after a determination by the Authority.**

Applicable BSC Objectives

The impact of the P365 solution on the relevant BSC Objectives is displayed in the table below:

Impact of the Modification on the Relevant BSC Objectives	
Relevant Objective	Identified impact
a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence	Neutral
(b) The efficient, economic and co-ordinated operation of the National Electricity Transmission System	Neutral
(c) Promoting effective competition in the generation and supply of electricity and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity	Neutral
(d) Promoting efficiency in the implementation of the balancing and settlement arrangements	Positive
(e) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency [for the Co-operation of Energy Regulators]	Neutral
(f) Implementing and administering the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation	Neutral
(g) Compliance with the Transmission Losses Principle	Neutral

In the view of the Proposer and as agreed by ELEXON, this Modification will better facilitate Applicable BSC Objective (d) as:

- Sharing the fixed costs of ELEXON across the REC service allows costs to the BSC Parties to be defrayed; and
- 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.

These were the same reasons cited by the Proposer of P330. Due to the parallels between this Modification Proposal and P330, it is worth highlighting the reasons for Ofgem's decision to approval P330. In its [decision letter](#), Ofgem stated that it had previously considered the case for allowing ELEXON to diversify its activities.

In accepting BSC Modification [P284 'Expansion of ELEXON's role via the 'contract model''](#) in September 2012, Ofgem set out its view that whilst there might be benefits of diversification, robust arrangements had to be put in place to mitigate any additional risk to the BSC and BSC Parties. Ofgem considered that the following criteria would have to be met:

- BSC Parties should benefit from any diversification;
- The arrangements should not place disproportionate risk on BSC Parties;
- Standards of service under the BSC should be maintained; and
- ELEXON's BSC role should not give it any undue competitive advantage in a contestable activity.

In [accepting P284](#) Ofgem allowed for these criteria to be met by establishing, subject to a decision of the ELEXON Board, a 'contract model', whereby ELEXON would become distinct from, and provide services under contract to, the BSCCo. However, Ofgem also suggested that there might be other, more proportionate, means of meeting the criteria where the extent of risk was more limited. Ofgem also stated that it would be appropriate for the ELEXON Board and BSC Parties more generally to give further consideration to a more limited diversification under the existing structure.

Ofgem stated that they agreed with the BSC Panel that P330 should be assessed against relevant objective d) only, and that there will be a neutral impact upon the other BSC objectives. Ofgem considered that the first three of the criteria set out above were captured under relevant objective d), whereas the fourth extends beyond the BSC objectives and is suitably considered as part of Ofgem's wider statutory duties.

Regarding Ofgem's wider statutory duties, they state that whilst the benefits of ELEXON's participation in the gas PAFA tender may not directly be of consideration for the BSC Objectives, it considers that the existence of additional bidders should improve the extent and quality of the competition for that contract. This is therefore consistent with Ofgem's wider statutory duties.

Self-Governance

ELEXON and the Panel agrees with the Proposer's view that this Modification Proposal should not be treated as Self-Governance, on the basis that implementing the solution to this change will amend the Code's governance procedure.



What are the Self-Governance Criteria?

A Modification that, if implemented:

- (a) is unlikely to have a material effect on:
- (i) existing or future electricity consumers; and
 - (ii) competition in the generation, distribution, or supply of electricity or any commercial activities connected with the generation, distribution, or supply of electricity; and
 - (iii) the operation of the national electricity transmission system; and
 - (iv) matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies; and
 - (v) the Code's governance procedures or modification procedures; and

(b) is unlikely to discriminate between different classes of Parties.

7 Panel's Initial Discussions

The P365 Initial Written Assessment was presented at the February Panel meeting ([Panel 275/04](#)).

The Consumer Panel representative queried the anticipated costs of the bid. ELEXON confirmed that the cost of the RECAS Tender loan or grant is capped at £100k. Further, the expenditure is ring-fenced, to ensure that costs are captured within the amount.

A Panel Member noted that the BSC Panel has been supportive of the concept of Code Consolidation and of ELEXON tendering for the additional role; and therefore supported the Modification. The same Member noted the importance of ensuring appropriate controls over the tender costs, but was confident in ELEXON and the Board's ability to do this. The Member went on to note that it makes sense to widen the pool of those tendering for the REC role, to encourage competition and the evaluation of a range of different operating models in the process.

Another Panel Member highlighted that the Modification provided the opportunity for ELEXON to engage with a more diverse range of work, to support the attraction, development and retention of its employees.

The BSC Panel did not request that any further non-standard questions be added to the Report Phase Consultation for P365. The Panel unanimously agreed with all recommendations.

Ahead of the Panel meeting, Ofgem confirmed that P365 is not implicated in any on-going SCR and as such is exempt from the SCR process. The Ofgem representative did not provide any further comments in the Panel meeting.

8 Report Phase Consultation Responses

This section summarises the responses to the Panel's Report Phase Consultation on its initial recommendations. You can find the full responses in Attachment B.



What are the Applicable BSC Objectives?

(a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence

(b) The efficient, economic and co-ordinated operation of the National Electricity Transmission System

(c) Promoting effective competition in the generation and supply of electricity and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity

(d) Promoting efficiency in the implementation of the balancing and settlement arrangements

(e) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency [for the Co-operation of Energy Regulators]

(f) Implementing and administering the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation

(g) Compliance with the Transmission Losses Principle

Summary of P365 Report Phase Consultation Responses

Question	Yes	No	Neutral/ No Comment	Other
Do you agree with the Panel's initial unanimous recommendation that P365 should be approved?	8	1	0	0
Do you agree with the Panel that the redlined changes to the BSC deliver the intent of P365?	6	1	1	1
Do you agree with the Panel's recommended Implementation Date?	8	0	1	0
Do you agree with the Panel's initial view that P365 should not be treated as a Self-Governance Modification?	9	0	0	0
Do you have any further comments on P365?	5	4	n/a	n/a

Consultation respondents' views on Proposed Modification

Eight of the nine respondents to the Report Phase Consultation agreed with the Panel's initial unanimous recommendation that P365 should be approved. The reasons provided were broadly in agreement with those of the Panel.

Respondents agreed that the Modification better facilitated Applicable BSC Objective (d) compared to the current baseline, as the Modification seeks to increase the pool of experienced Industry Code Administrators that can participate in the competitive process to appoint a body to administer the new REC.

The Modification was also seen as an opportunity to share ELEXON's fixed costs across the REC service, allowing costs to BSC Parties to be defrayed.

One respondent noted that if RECASCo is not successful, costs will have been expended without benefit but further stated that the potentially unrecoverable cost is equivalent to less than 0.0002 £/MWh on BSCCo charges on production and consumption volumes. Therefore the relatively small expenditure can be justified against BSC Objectives

The same respondent suggested that the Modification better facilitated Applicable BSC Objective (c), in addition to Objective (d). The respondent believed that participation of the proposed RECASCo should improve competition under the BSC, regardless of success of the proposed tender, because:

- registration of individual Meters to BSC Parties is necessary to support competition between those parties under the BSC;
- the proposed REC is intended to support effective operation of future registration processes; and therefore,
- increased competition in procurement of REC services should improve the services delivered.

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One respondent suggested that the Modification did not go far enough. To better facilitate the Applicable BSC Objectives, the Modification could have been 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.

Another respondent highlighted that ELEXON's expert knowledge of the electricity industry means they are ideally placed to administer the REC, acting as a single point of contact and enabling synergies between the REC and the BSC.

The remaining respondent, who is not a BSC Party, believes that this Modification does not impact any of the Applicable BSC Objectives in a positive way.

The respondent believed that the Modification does not better facilitate Applicable BSC Objective (d), as there are no requirements within the Modification for ELEXON to ensure that steps are taken to lead to an efficiency gain.

The respondent viewed the Modification as a means to allow ELEXON to step outside its normal permissions and provides a route by which it can decide whether to enter the procurement process. However, to realise an efficiency gain, the ELEXON Board would need to decide to tender for the REC administrator role, and then win the bid. Therefore, should the ELEXON Board decide to tender for the REC administrator role and not win the bid, costs will be incurred that cannot be recovered.

The same respondent noted that the cost of the tender is capped and expenditure is ring fenced. However, the respondent expressed concerns that the bidding process could have a detrimental and distracting effect on ELEXON's performance of its existing responsibilities under the BSC. ELEXON has noted these concerns, and recognises that the same concern had been expressed regarding EMR. These concerns were addressed at the time. ELEXON noted it will continue to fulfil its obligations.

Finally, the respondent believed that 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. ELEXON has noted these comments.

Consultation respondents' views on draft legal text

Six of the nine respondents agreed with the Panel that the redlined changes to the BSC deliver the intention of P365. Of the three respondents who did not agree; one respondent did not wish to provide a comment and did not provide a rationale; one did not agree with the draft legal text; and the remaining responded as 'other'.

The one respondent, who did not agree with the legal text, believed that the legal text does not ensure any efficiency gain for BSC Parties by ensuring that the BSC's fixed costs are shared. They expressed a view that should ELEXON win the tender; there is no legal protection for BSC Parties from subsidising the administration of the REC. As such, the respondent believes that the legal text should be amended to ensure the legal protection for BSC Parties.

ELEXON advised that Section C3.4.6 contains a prohibition on ELEXON providing (or receiving) any cross-subsidy from a Permitted Affiliate. RECASCo will be a Permitted Affiliate because it is established to perform a Permissible Activity (see Section C1.2.1B and legal text amendments to Annex C-1).

The remaining respondent who responded as 'other' provided a number of comments on the legal text, which ELEXON has responded to below.

Summary of P365 Report Phase Consultation Responses	
Question	ELEXON's response
<p>Proposed Annex C-1 3.3.4 includes: "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)."</p> <p>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>No. The statement must always obtain Panel approval to be final and binding. The text means that the Panel must approve the statement of account and the statement of account approved by the Panel is final and binding on Parties unless a Party identifies a manifest error within 6 months.</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.</p> <p>Does this conflict with the requirements of BSC Section C '7.5.1 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 Directors of BSCCo, and the company secretary of such Subsidiary shall be the person who is for the time being company secretary of BSCCo'?</p>	<p>No. Annex C-1 paragraph 10.1.1(d) disapplies paragraph 7 for the purposes of Permitted Affiliates. RECASCo will be a Permitted Affiliate because it is established to perform a Permissible Activity (see Section C1.2.1B and legal text amendments to Annex C-1).</p>

Summary of P365 Report Phase Consultation Responses	
Question	ELEXON's response
<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.</p> <p>What reassurance will BSC Parties and the BSC Panel have that money has been spent appropriately?</p>	<p>Annex C-1 paragraph 3.2.5 requires ELEXON to ensure that its statutory auditor conducts an audit of the RECAS tender costs and requires ELEXON to publicise this report to the Panel and Parties (ELEXON in any event always publishes its full annual report and financial statements) so this should give Parties reassurance.</p> <p>Further, 3.4.5(b) does require ELEXON to provide a reasonable level of transparency to Parties but this, does, as you say fall short of itemising every item of expenditure. The way we would expect this to work is that the Panel and Parties will have visibility of RECASCo's total expenditure on a quarterly basis (and at the end of the process) with a cost breakdown that would include:</p> <ul style="list-style-type: none"> • Internal costs broken down to a reasonable level of detail (e.g. number of man days during the reporting period, which was the approach we adopted during EMR); • Total external costs which we will break down in as much detail as we can having regard to confidentiality obligations. <p>ELEXON confirmed that an explanation to this effect will be provided in the Final Report.</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>	<p>ELEXON is only allowed to establish subsidiaries to the extent that this is explicitly permitted in Annex C-1. This general restriction is captured in C1.2.1B. The restrictions of RECASCo's role are captured in Annex C-1 paragraph 3. We would prefer to keep these restrictions in one place (rather than covering twice but to different levels of detail) so as to minimise the risk of misinterpretation.</p>

Consultation respondents' views on the proposed Implementation Date

Eight respondents to the Report Phase Consultation agreed with the Panel's recommended Implementation Date of five Working Days after a determination by the Authority.

One respondent echoed the Report Phase Consultation, by highlighting that the Modification only requires a text change to the BSC. Another respondent highlighted that

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the P365 will not have an immediate impact on BSC Parties. Therefore no preparations are required, nor any issues foreseen with implementing five Working Days after determination by the Authority.

The remaining respondent who did not agree with the Implementation Date did not have an opinion, or provide a comment.

Consultation respondents' views on Self-Governance

All respondents to the Report Phase Consultation agreed with the Panel's initial unanimous view that P365 should not be treated as a Self-Governance Modification.

The views of respondents were broadly in line with the rationale provided by the Proposer and ELEXON in the Report Phase Consultation. The Modification will amend the Code's governance procedure and therefore should not be a Self-Governance Modification.

One respondent went further to note that while the impacts on BSC Parties are relatively small, it was sensible to seek explicit confirmation from the Authority, on their support of BSCCo potentially expanding its activities into other regulated Code Administrative activities.

Further comments

Five of the nine respondents provided further comments to the P365 Report Phase Consultation.

One respondent suggested that the Authority should be asked to ensure a decision is made before it seeks applications for the REC administrator role.

Another noted their support for the principle of ELEXON being able to tender for the REC, although highlighted the importance of cost control, to ensure that benefits to the industry and consumers outweighs the cost. The same respondent went on to reiterate their reasons for supporting the change, noting that without it, the pool of experienced Industry Code Administrators that can participate in the competitive process is limited. Further, ELEXON's strong track record of Code Administration performance instils confidence that they would manage the required REC-related activities.

Another one of the five respondents who provided further comments expressed concerns that this Modification may cause a distraction within ELEXON during and post the bidding process. ELEXON noted these concerns, and will ensure that ELEXON continue to fulfil its obligations. This same point had been made regarding EMR, and this concern had been adequately addressed at that time as well.

A further respondent queried how the £100k anticipated cost of the tender was calculated. The respondent noted that while they believe it is important that ELEXON has sufficient funds to compete in the tender process, it should not become a barrier for ELEXON to be able to successfully tender for a role. The respondent suggested that the cap be 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.

The final of the five respondents who provided further comments, summarised a number of objections to the Modification; in relation to competition, the Modification not meeting the BSC Objectives, the risk to BSC Parties and liability to BSC Parties.

The respondent noted that they did not support the participation of not for profit code bodies in competitive tender processes, as they do not believe it provides for a level playing field as not for profit organisations are unable to accept any risk. ELEXON noted these comments.

Respondents' full responses are shown in Attachment B.

Panel's considerations on P365

The P365 Draft Modification Report was presented at the March Panel meeting ([Panel 276/06](#)).

The Chairman highlighted to the Panel that as the BSCCo Board would like ELEXON to take part in the tendering process for the REC, he would not participate in the debate on P365. The Chairman noted that as a member of the BSCCo Board, should the Panel perceive a conflict of interest; chairing responsibilities can be passed to the Alternate Chair. The BSC Panel did not object to the Chairman continuing with the agenda item.

A Panel Member was pleased that a number of small Suppliers had responded to the P365 Report Phase Consultation but was surprised that not all of the "big six" Suppliers had responded. The Panel Member queried whether this was a concern. Another Panel Member commented that as an employee of a "big six" company, he was aware that the "big six" Supplier is supportive of the proposal. However, as this is yet to go to the tender process, they found it particularly difficult to respond to as they did not want to be seen as favouring one particular Party by providing a response. The same Panel Member commented that they were happy with ELEXON's assurances in relation to cost control and had no competition concerns with ELEXON being a not for profit organisation.

A Panel Member commented that ELEXON has been through this process a number of times and they were pleased that the P365 Draft Modification Report highlighted all the previous concerns that had been raised, as this increased transparency for the industry. The Panel Member noted that ELEXON will remain under scrutiny throughout the tender process but it is clear that they have the best interests of BSC Parties at the forefront.

ELEXON highlighted that although Parties recognise that there is currently a lot of industry change going on, ELEXON still received nine responses to the Report Phase Consultation for P365. ELEXON commented that this is extremely positive. ELEXON also highlighted that the draft legal text is transparent in relation to cost and so there are no surprises for Parties.

The Distribution System Operator representative was concerned about ensuring a level playing field in the tender process. He suggested that Ofgem take note and ensure that both not for profit and commercial models are able to participate.

A Panel Member noted that it would be beneficial to have a number of different operating models assessed in the tender process.

The Chairman noted that if the BSCCo Board determines that ELEXON will not to take part in the tendering process for the REC, then they would explain themselves to the BSC Panel and BSC Parties as they had done for P330. However, he noted that they would not do this at the time the tendering process is taking place.

Panel's final determinations

Applicable BSC Objectives

The BSC Panel unanimously believed that P365 **would better facilitate Applicable BSC Objectives (d)** and unanimously recommended that **P365 should be approved.**

Self-Governance

The BSC Panel unanimously agreed that P365 should not be treated as a Self-Governance; as the Modification will have a material effect on the Code's governance procedures. It therefore recommended that **P365 should not be progressed as a Self-Governance Modification.**

Legal text

The BSC Panel unanimously agreed that the draft redlined changes to the BSC in Attachment A deliver the intention of P365.

Implementation Date

The BSC Panel unanimously agreed with the proposed Implementation Date of **five Working Days following a determination by the Authority.**

10 Recommendations

The BSC Panel recommends to the Authority:

- That P365 is **not** a Self-Governance Modification;
- That P365 should be **approved**;
- An Implementation Date for P365 of five Working Days following a determination by the Authority; and
- The BSC legal text for P365.

Appendix 1: Glossary & References

Acronyms

Acronyms used in this document are listed in the table below.

Acronym	
Acronym	Definition
BSC	Balancing and Settlement Code
BSCCo	Balancing and Settlement Code Company
DCUSA	Distribution Connection Use of System Agreement
EMR	Electricity Market Reform
IWA	Initial Written Assessment
MRA	Master Registration Agreement
PAFA	Performance Assurance Framework Administrator
REC	Retail Energy Code
RECAS	REC Administrative Services
RECASCo	REC Administrative Service Company
SCR	Significant Code Review
SPAA	Supply Point Administration Agreement
UNC	Uniform Network Code

External links

A summary of all hyperlinks used in this document are listed in the table below.

All external documents and URL links listed are correct as of the date of this document.

External Links		
Page(s)	Description	URL
4	Delivering Faster and More Reliable Switching: proposed new switching arrangements page on the Ofgem website	https://www.ofgem.gov.uk/publications-and-updates/delivering-faster-and-more-reliable-switching-proposed-new-switching-arrangements
5	P365 page on the ELEXON website	https://www.elexon.co.uk/mod-proposal/p365/
5, 10	P330 page on the ELEXON website	https://www.elexon.co.uk/mod-proposal/p330/
10, 11	P284 page of the ELEXON website	https://www.elexon.co.uk/mod-proposal/p284/
12	BSC Panel Meeting 275 page of the ELEXON website	https://www.elexon.co.uk/meeting/panel-meeting-275/
19	BSC Panel Meeting 276 page of the ELEXON website	https://www.elexon.co.uk/meeting/bsc-panel-meeting-276/

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