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BEIS Consultation: The Future Ownership of Elexon

SSE Group welcomes the opportunity to comment on proposals for the future ownership of Elexon. Full details are contained in Appendix 1.

We would draw your attention to the following key points:

- We support the public ownership option as part of the FSO: it is the least disruptive approach in relation to the FSO timetable and Elexon's operations.
 - This approach also helps minimise the extent to which ownership becomes a distraction and drain on resources at a time of several far-reaching regulatory reviews and reforms.
- The analysis of the current industry ownership proposal still needs clarifying in many areas, eg. the impact of future Code Governance reforms; pensions liabilities; or the restrictions prohibiting some market participants from the envisaged shareholdings.
 - The potential for addressing such issues to result in a significant drain on time and resources should not be underestimated.
- Moreover, we do not support an industry ownership model predicated on a mandatory approach – far better and fairer to all concerned would be a voluntary approach involving licenced BSC funding parties.

I trust that you find this response helpful. Should you require any further clarification regarding our views, please do not hesitate to contact me.

Yours Sincerely

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Appendix 1

Do you agree with the proposed criteria to determine the future ownership of Elexon?

Please state why.

- We agree with the proposed criteria but would emphasize the following key points:
 - Avoiding disruption to the FSO delivery timeline is a key requirement. It is, therefore, puzzling to see an initial preference for an industry ownership model with many issues yet to be addressed and so the greatest potential to delay this timeline - a point picked up elsewhere in this response.
 - The future Elexon ownership model must be one that not only preserves independence and accountability to its stakeholders – including non-shareholders, the Panel etc - but also one based on a governance structure overseen by an engaged Board rather than multiple disinterested parties who have had ownership forced on them.
 - The future ownership structure of Elexon should be resilient to future change. The implications, therefore, of Elexon becoming a future Code Manager are a relevant consideration - BEIS should set out what it thinks are the implications of either public or industry ownership in this regard.

Do you agree that public ownership and industry ownership are the two most credible ownership options? In your view, are there any other ownership options that we should consider, and why?

- While they are the most obvious and credible options, there remain consequential issues that must be addressed by BEIS.
 - In bilateral and industry meetings with BEIS, Ofgem and Elexon, it has been suggested that there is support for industry ownership – on that basis, it is unclear why the proposed industry ownership model is based on a mandatory approach (other than a perceived ease of implementation by BEIS and Ofgem).
 - Given the apparent support, there should be no concern at a variant of the industry ownership based around licenced BSC funding parties indicating their willingness to become shareholders.
 - This need not be a lengthy process; indeed, BEIS, Ofgem and Elexon must already be aware of several such parties.
 - Such a process would also allow for a speedier agreement on future liabilities such as pensions or those related to a future role for Elexon as a Code Manager.
 - Aside from this industry ownership variant, further consideration should be given to one based on ownership limited by guarantee. Such a model would help allay remaining concerns that BEIS and Ofgem may not have addressed regarding regulatory and enforcement financial liabilities if Elexon is found in breach of licence.

Do you agree with our stated preference of the potential combinations of BSC parties which could own Elexon if industry ownership were chosen? Please state why.

- If industry ownership is chosen as a future model, then all licenced BSC parties that fund Elexon would seem a logical set from which to invite willing future owners.
 - Importantly, from the perspective of fairness, this would mean that only those parties interested in ownership would become shareholders.

- Such an approach may also help address the issue of any BSC parties having financing arrangements in place that prohibit them from owning shares in other companies; such parties would need a derogation from any licence obligation to own shares if mandatory industry ownership is to be pursued.
- A more general comment is that all future industry ownership models must have in place robust regulatory, governance and compliance safeguards to help protect the interests of all relevant parties and stakeholders, such as the BSC Panel or BSC parties who are non-shareholders.

To what extent do you agree with the above analysis of the two main ownership options, public ownership and industry ownership, and our preference for industry ownership?

- Both options could be implemented but we reiterate that significant issues remain with the proposed industry ownership option. For example, the analysis is lacking in two important respects.
 - Firstly, it does not address the issue of any shareholder liabilities with regards to regulatory enforcement action or fines should Elexon become a licenced Code Manager (see below for further details).
 - Secondly, there is no detail in relation to future pensions liabilities; to the extent that such costs may be considered insignificant, it should not prove challenging to find an alternative funding mechanism.
- BEIS will be aware that questions regarding pensions have been asked repeatedly during the consultation process and yet remain unanswered to any satisfactory degree.
- It should also be noted if the industry ownership model has widespread support, it seems counterintuitive to rely on a mandatory approach - the analysis has not, if at all, covered this point.
- Moreover, we would question the preference for the proposed industry ownership approach for two key reasons.
 - The public ownership model is the one most likely to facilitate a 'business as usual' outcome in relation to Elexon's governance and operations.
 - It is the industry ownership model that has the greatest potential for endangering the FSO timetable – a point the consultation document itself acknowledges.
- Having multiple shareholders in this instance could also give rise to further complications.
 - Small shareholdings that have no value in themselves could limit the strength of each party's commitment to robust Board participation.
 - Lots of shareholders could result in more complicated and time-consuming governance arrangements than those associated with a single shareholder, ie. the FSO.

To what extent do you agree with our proposal that Elexon should transfer temporarily into the public sector as a subsidiary of the FSO as a last resort, if industry ownership were chosen following consultation but could not be implemented without delaying the creation of the FSO? Please explain why.

- We would fully endorse having this fallback option:
 - The lack of clarity and so the potential for delay in relation to key aspects of the mandatory industry ownership model should not be underestimated.
 - An obvious danger is in relation to the FSO timetable envisaged by BEIS and Ofgem.
- Consequently, BEIS and Ofgem must devote sufficient time and resources to ensuring that all issues related to the fallback option have been resolved by the time of the FSO go-live date.

Are any other changes required to implement either of the two ownership options?

- We would reiterate the need to review the mandatory nature of the industry ownership model.

What are your views on the proposed licence and code changes set out above?

- Under the proposed framework, irrespective of the group of industry parties that would own Elexon, the rights and obligations for shareholders would remain set out in the BSC. However, whilst this introduces minimal change, the latest Energy Code Reform updates sets out the intention to create a new governance framework for the energy codes.
 - The impact that this development will have on the rights and obligations of future shareholders needs to be addressed.
 - For instance, future non-performance of Elexon could result in new liabilities for its shareholders depending on how these proposals are implemented. It is important that in considering taking forward a mandatory industry ownership model at this time, sufficient protections/commitments are put in place to address / remove these potential future risks.
- Again, enforcing ownership via a licence condition might cause problems with those companies that are excluded from share ownership due to their financing arrangements.

Have we considered all relevant costs and benefits of these proposals? Please state why.

- If the industry ownership option as currently proposed is implemented, all BSC Parties will be replicating work and costs, which will be passed onto consumers. BEIS should consider the role that it, Ofgem and Elexon could play in minimising these costs.