

Market Facilitator Governance Consultation Response Form

Publication date: 18 September 2025

Please use this response form to respond to the Market Facilitator Governance Consultation which was published on Thursday 18 September 2025.

Please submit your response to flexibility@ofgem.gov.uk by 5pm on Thursday 16 October 2025.

Respondent details
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Confidentiality
We will publish non-confidential responses on our website. However, You can ask us to keep your response, or parts of your response, confidential.
Do you want all or part of your response treated as confidential? If yes, please confirm if all or part of the response should be treated as confidential and if so, which part No

Questions

Annex A – Draft Governance Framework Document

Q1. Do you agree that the Draft Governance Framework Document clearly defines the scope, roles & responsibilities and deliverables of the Market Facilitator? If not, what would you change and why?

Although Ofgem input into the delivery plan and annual schedule has been highlighted as optional, we would expect Ofgem to input into these deliverables.

With regard to the two-year delivery plan and annual delivery schedule, a requirement needs to be added for the Market Facilitator to obtain input from the SAB on the delivery plan before seeking wider stakeholder feedback and ensure they obtain input on the annual delivery schedule. This is important to allow the SAB to provide relevant scrutiny and ensures efficient checks and balances on Market Facilitator activity.

With regard to the Annual Budget we would like to see a requirement for the Market Facilitator to ensure input from the SAB on the annual budget. This needs to be set out in the Market Facilitator obligations.

Q2. Do you agree with the appeals process and the proposed performance arrangements for Elexon as the Market Facilitator? If not, what would you change and why?

The appeals mechanism should be strengthened:

We welcome Ofgem developing an appeals mechanism. We understand the attractiveness of seeking to align with the proposed arrangements for Code Managers. However, we highlight two areas in which the proposed Code Manager

arrangements need to be improved and, therefore, should not be adopted for the Market Facilitator. We highlight another area in which Ofgem proposes to diverge from the proposed arrangements for Code Managers but for which there should be full alignment.

There should be the right to appeal aspects of the budget that are not a cost item:

We disagree with the proposal to only allow appeals based on cost items that are included in the budget. (This aspect is included in the proposed arrangements for Code Managers.) This is because there are other components of the budget such as financing costs, contingencies and the treatment of inflation that may not be presented as a cost item linked to an activity but can have a material impact on the charges imposed on code parties. We recommend that the criteria for appealing include components of the budget that are not cost items linked to particular activities.

There should be the right to appeal if the Market Facilitator costs have not been demonstrated to be efficient:

We disagree with the proposal that a ground of appeal should be that the cost items is a manifestly inappropriate provision for the activity in question, and there are insufficient safeguards in place to ensure that the actual costs incurred will be efficient. (This aspect is also included in the proposed arrangements for Code Managers.)

Firstly, including the 'manifestly inappropriate' requirement means that there is a material degree of inefficiency that Ofgem is prepared to require that must be funded. We remind Ofgem that the inefficiency would be funded by only those market participants that are required to fund the Market Facilitator and not the entire

flexibility community. That inefficiency would not be borne equitably across the market and could create distortions.

The grounds for appeal should be revised to state that the cost item has not been demonstrated to be efficient rather than the cost item being a manifestly inappropriate provision. This is necessary because the Market Facilitator's costs are not subject to regulatory scrutiny. We believe this is an important backstop mechanism.

Secondly, the governance framework represents a conflict of interest in this respect. Elexon has final approval of the Budget and the framework does not compel Elexon to revise the Budget to fully reflect the feedback it receives. Additionally, the right to appeal is itself also a safeguard to ensure that the actual costs incurred will be efficient.

Spending against a cost item that is subject to an appeal must be paused:

We disagree with the proposal that the Market Facilitator shall be allowed to continue to incur costs for that cost item that appeal is being considered (especially as Elexon is a not-for-profit body) and without Ofgem being obligated to decide on the appeal within an appropriate timeframe. These conditions combined mean the incentive to address and resolve an appeal is absent. Our experience in the gas sector highlights that this proposal creates a significant risk of detriment. We make 2 recommendations:

1. *Spending against a cost item that is subject to an appeal must be paused unless Ofgem directs otherwise:*

This approach has been proposed for appeals of Code Manager budgets. (Xoserve and Elexon operate on a not-for-profit basis, and Code Managers will be not-for-profit entities.) This approach should reduce the risk of inefficient spending being incurred which may need to be unwound. This approach recognises that the not-for-profit model makes the reimbursement of already-incurred costs challenging. This approach should also have the effects of the Market Facilitator being more focussed on efficiency and encouraging the entity to be more responsive to market participants' concerns.

Furthermore, Ofgem should recognise that requiring only the BSC funding parties and not the entire flexibility community to fund the Market Facilitator means that any detriment would be unfairly concentrated on a small subset of market. This concentration of detriment could create market distortions.

2. *An appropriate timeframe within which an appeal is considered (e.g. 30 days) should be confirmed.*

This approach should also reduce the risk of inefficient spending being incurred which may need to be unwound and should reduce the risk of detriment being embedded because of lengthy regulatory consideration of appeals.

Performance Arrangements:

We support the proposals. We welcome the second objective to deliver FMAR by July 2027 and the stakeholder survey to provide views on Elexon's performance. This will

enable opportunity to raise any concerns regarding other key deliverables with Elexon e.g. MHHS, SDR, Energy Code Reform (Code Manager).

Q3. Do you have any other comments on the Draft Market Facilitator Governance Framework Document?

We do not have any further comments

Annex B – Draft Market Facilitator Impact Assessment

Q1. Do you agree that we have, to a reasonable extent, identified and understood the potential costs and benefits of implementing the Market Facilitator?

n/a

Q2. Do you agree that we have, to a reasonable extent, identified and understood the potential impacts of the introduction of the Market Facilitator? Are there any unintended consequences of implementing the Market Facilitator that we have not identified?

n/a

Annex C – Licence Changes

Q1. Do you agree with the updated proposed Definitions to be added to the Standard Conditions of the Electricity Distribution Licence and the ESO Licence? Are any changes required?

n/a

Q2. Do you agree with the updated proposed licence condition clauses for Flexibility Market Rules to be added to both licences? Does the current drafting deliver the policy intent? Do you have any suggested changes?

n/a
Q3. Do you agree with the updated proposed licence condition clauses for implementation monitoring to be added to both licences? Does the current drafting deliver the policy intent? Do you have any suggested changes?
n/a
Q4. Do you agree with the updated proposed licence condition clauses for Market Facilitator input into NESO service design to be added to the ESO Licence? Does the current drafting deliver the policy intent? Do you have any suggested changes?
n/a
Q5. Do you have any additional comments or suggestions?
<p>We disagree with the decision not to include a licence obligation for NESO to comply with the terms of the NESO–Market Facilitator Ways of Working Document. The NESO will play a critical role in developing a liquid and well-functioning flexibility market by, for example, designing or refining product designs to allow revenue stacking. Without the licence obligation, it is unclear to us whether there are any other effective regulatory levers that Ofgem could utilise to ensure the NESO fully complies with the Document.</p> <p>We also disagree with the decision not to pursue an initial proposal to require the NESO Designate a named senior "sponsor" who is responsible for ensuring that the relevant parts of the business engage in full, including adopting the agreed technical outputs and complying with the agreed processes (e.g. implementation monitoring).</p>

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