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Consultation Title: Annex A – Draft Governance Framework Document

Dear Joseph,

Thank you for the opportunity to respond to your consultation on the Draft Governance Framework document section of the Coordinating flexibility: the market facilitator blueprint consultation.

Who we are

NESO lies at the heart of the energy system as an independent, public corporation responsible for planning Great Britain's electricity and gas networks, operating the electricity system and creating insights and recommendations for the future whole energy system.

At the forefront of our efforts is delivering value for consumers. We work with government, regulators and our customers to create an integrated future-proof system that works for people, communities, businesses and industry.

NESO's primary duty is to promote three objectives: enabling delivery of a cleaner, affordable and reliable energy system for current and future consumers. NESO will take a whole system approach, looking across natural gas, electricity and other forms of energy and will engage participants in all parts of the energy ecosystem to deliver the plans, markets and operations of the energy system of today and the future.

Our key points

- **We welcome the steps Ofgem has taken to specify the scope and objectives of the Market Facilitator.** To be set up for success, the Market Facilitator must have a framework that ensures it can focus on where it can offer the most value. As such, we appreciate Ofgem making clear that the scope of its functions is related to its objectives; this is particularly

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important to focus its approach to managing Flexibility Market Rules with the open governance arrangements. Similarly, we think it is important that Ofgem has made clear that common market arrangements should only be sought where they offer system value.

- **We maintain it is important for Ofgem to make clear how the Market Facilitator role differs from and interacts with the role of system operators** with respect to service design. Without doing so, there is a risk of duplication, incoherent development, or unclear accountabilities slowing progress.
- **We would like to see a stronger focus on consumer value.** We agree that there is a role for flexibility to deliver positive consumer outcomes around secure, lower carbon, and economical networks and systems. It is critical that the framework recognises that flexibility is means to deliver these outcomes rather than the outcome in itself.

We look forward to engaging with you further. Should you require further information on any of the points raised in our response please contact Kashia Cullen-Anderson, Distributed Flexibility Strategy Manager at Kashia.Anderson@neso.energy.

Yours sincerely

Rebecca Beresford

Director of Markets

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Appendix 1 Consultation Question Responses – Draft Governance Framework Document (Annex A)

1. 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?

Scope and objectives:

- It is essential to clarify the scope of the Market Facilitator to ensure it is sufficiently expert and focused to deliver effectively and quickly. As such, we appreciate that Ofgem has taken account of our feedback on the scope and objectives.
- First, we welcome the amendments made to clarify the Market Facilitator shall seek service alignment only where it offers system value and with a mind to the role of services in ensuring secure electricity systems. Homogenising our services would undermine the unique and complementary roles our services offer in economical and secure system operation.
- Second, it is right that Ofgem has made clear that coordination of NESO and DSO services is within scope. We think that some of the most value the Market Facilitator can offer is in driving capabilities, processes and market arrangements across NESO and DSOs; for example for service primacy and revenue stacking.
- Third, we highlight the importance of the change to ensure the scope of the Market Facilitator is bounded both by the services stated as in scope and the objectives of the Market Facilitator. Given the open governance arrangements, it is essential Elexon has clear guidance to focus on Flexibility Market Rules around NESO–DSO service alignment and coordination.
- We do, however, think Ofgem could go further in clarifying the role. For example, whilst we welcome Ofgem’s qualifications that service alignment should be sought only where it offers system value, it has introduced a new objective around ensuring ‘consistent’ market arrangements which does not currently have the same important qualifications.
- Ofgem should also make clearer the distinctiveness of the Market Facilitator role compared to system operators. The Framework Document states that the Market Facilitator should simplify access to transmission flexibility markets and increase participation, which is also clearly in scope of NESO’s objectives as set out in licence condition C1.5(b) of our Electricity System Operator (ESO) Licence. Making clear the uniqueness of each party in its aims and approaches is important to ensure clear accountabilities, accelerate process and avoid duplication or incoherent decision-making.
- On the first Delivery Plan Objective specifically, we would like to understand if Ofgem intends that the Market Facilitator must have defined aligned arrangements, or that NESO and DNOs must have implemented aligned arrangements, by 31 March 2028.
- We would also like to see a clearer focus on consumer value, and guidance on how Elexon must consider this in prioritising its actions.

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Markets in scope

- Given Ofgem anticipates the Market Facilitator may have a role in developing new services, it is important to identify clearly somewhere in the framework the criteria against which Ofgem determines which markets are “in scope.” We recognise that for the first delivery plan period, the scope will include the balancing mechanism together with NESO balancing services falling under the “commercial ancillary services” heading in NESO’s procurement guidelines (apart from stability and reactive power). This does not however make clear how any new markets shall be treated.

Balancing Mechanism

- Generally, we think Ofgem should explain how FMRs will be brought into effect in the Balancing Mechanism (BM). The BM terms are governed by the Balancing and Settlement Code and the Grid Code, both of which have their own established governance processes. This means the implementation of an FMR which requires change to the BSC or Grid Code is not within control of NESO (as it is with changes to ancillary service terms and conditions, subject to Ofgem’s approval).
- The Document provides that *“the Market Facilitator scope includes... Balancing Mechanism, excluding operational decisions, for example as to which bids and offers to accept and the subsequent balancing instructions to market participants.”* We note that this is currently set out in our Balancing Principles Statement¹ and agree that Elexon as MF should not amend or override the provisions in the statement.

Further comments

- In addition, we set out the following more specific comments:

Para reference	Comment
2.5	Our understanding is that the objectives referred to are those set out in paragraph 5.4 and we suggest that this cross-reference is added to make this paragraph clearer.
2.12	In the section on Market coordination, we suggest that <i>‘potential inconsistencies’</i> should be made clearer.
2.16	We suggest Ofgem considers further whether <i>‘should’</i> is the right word here.
3.2 (and 4.30)	The language used in the licence <i>‘will issue and amend’</i> seems far clearer than <i>‘own’</i> .
3.9	We suggest that this should be stated to be <i>‘in line with the relevant Governance Documents’</i> .
3.26	It would be helpful if this paragraph could be made clearer.

¹ Available at <https://www.neso.energy/industry-information/codes/balancing-settlement-code-bsc/c9-statements-and-consultations>

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2. 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?

Appellants

- We suggest that Ofgem may wish to consider further whether the reference to '*interested party*' is intended to limit which organisations may bring an appeal as this does not currently seem completely clear.

FMR Appeals

- We consider the appeal grounds for FMRs generally reasonable, and we welcome the ability to challenge proposals that fall outside the Market Facilitator's scope. Given the novelty of these arrangements, we recommend Ofgem keeps the framework under review to ensure it remains fit for purpose.
- We note that the final bullet in para 4.48 should align with XX.4 of the statutory consultation licence drafting and should refer to any statutory duty or any other obligation under the licence or any industry code, rather than only referring to licence conditions. We also suggest that the part of para 4.49 referring to an appeal '*not mak[ing] a prima facie case*' is not clear and should be deleted – it does not appear to add anything to the test of whether there is a reasonable prospect of success.
- We consider that relevant interested parties other than the appellant should have the ability to be involved in any appeal to ensure transparency and inclusivity and suggest that provision is made for this in the document, which could be subject to Ofgem approval as part of the process.
- While we recognise the need for quick decision-making, we are concerned that the evidence requirements for appeals are not yet clearly defined, and the 14-day window may be therefore challenging. Ensuring the process is accessible, proportionate, and efficient will be key to enabling all parties to engage meaningfully. A 15/20 working day period, similar to that used in CMA appeals, may be more appropriate.
- Given para 4.49, where Ofgem has an ability to dismiss an appeal under 4.49 if it is deemed to be trivial and the possibility (although unlikely) that the Market Facilitator deems a change to be minor where others have a different view, we suggest that paragraph 4.41 is removed.
- We also think Ofgem should be subject to timelines in processing appeals in order to promote delivery at pace.
- It may be helpful for Ofgem to specify that it will determine the process for any appeal and to set out some further detail on what this might include.

Performance Assessment

- We agree with harnessing stakeholder feedback and self-assessment reports to evaluate performance.

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- We do, however, think it is critical that performance is assessed with respect to the system and consumer value provided by the Market Facilitator. We highlight that the Market Facilitator objectives do not explicitly refer to this value and note that flexibility is not an end in itself, but a means to achieving broader outcomes around secure and economic networks and systems. Second, the stakeholder survey must reflect that the interests of companies participating in flexibility services will not always align with consumers.

Further comments

- In addition, we set out the following more specific comments:

Para reference	Comment
4.9	We suggest the BSC reference is added here.
4.13	Should this be ' <i>one or more specific Market Facilitator costs items, not the...</i> '?
4.48	We suggest that ' <i>appropriate progression route</i> ' should be specified more clearly.

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

- Adaptability:** Ofgem should include mechanisms for regular review and adaptation of the framework. This would allow the framework to evolve in response to changing market dynamics and stakeholder feedback, ensuring its continued relevance and effectiveness.
- The Open Governance arrangements:** We have previously raised our concerns that an open governance arrangement risks unfocused development reflecting interested parties' own commercial interests, incoherent changes, and slow progress. We recognise that Ofgem has taken steps to address some of these concerns including by focusing the scope of the Market Facilitator and will ultimately hold Elexon accountable for how effectively it delivers changes. Nonetheless, we consider Ofgem needs to keep this arrangement under review, monitoring its effectiveness at delivering change at pace and whether the risks we highlighted are materialising.
- Extent of NESO/DNO obligations:** As set out in paragraph XX.4 of the statutory licence consultation drafting, the obligation proposed to be imposed on system operators is not absolute but is limited by existing regulatory provisions. This does not appear to be reflected in the Draft Market Facilitator Governance Framework Document and we suggest this should be updated to reflect the licence drafting and avoid possible confusion. For example, this could be made clear in paras 1.12, 2.19 and 3.8.
- Interaction between Market Flexibility Rule change and other legal processes:** In our response to Elexon's consultation on the draft Change Management Procedure (MFD03), we raised a concern around the interaction between the Change Management procedure and article 18 of the Electricity Balancing Regulation. The article 18 process is a discrete legal process with obligations on NESO and Ofgem which are separate to those the Market Facilitator must follow. We would expect the Article 18 process would need to be completed prior to any change to the market rules. Given Ofgem's role in the Article 18 process, we

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suggest that further consideration should be given to making the interactions clear in the Market Facilitator Governance Framework Document. We would welcome further discussion with Ofgem and Elexon on this point.

- Implementation monitoring:** Ofgem should clarify the limits of data requests to what is necessary for monitoring implementation of Flexibility Marker Rules and sets out clear standards and dispute resolution processes within the governance framework. Monitoring and reporting obligations should be proportionate to the scope and materiality of the licensee's relevant activities, and compliance assessments ought to recognise existing reporting mechanisms
- Further drafting comments:** We set out some further drafting comments below:

Para reference	Comment
1.2	We suggest ' <i>Elexon has been appointed as the Market Facilitator delivery body</i> '.
5.46	It doesn't seem clear to us how part of the Market Facilitator role could easily be reassigned and it may be helpful to have further clarity on this.