

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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Date of submission: 16 October 2025
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?

We agree that the Draft Governance Framework Document clearly defines the scope, roles, responsibilities and deliverables of the Market Facilitator. However, we recommend that further clarity be added regarding the data reporting required by DNOs.

Specifically, sections 3.25–3.27 state that Distribution Network Operators (DNOs) are responsible for reporting the adoption of Flexibility Market Rules to the Market Facilitator for inclusion in the Implementation Tracker. We ask for further clarity on the nature and format of the implementation evidence required, the process by which this information will be validated, and the mechanism for resolving any disagreements or inconsistencies in reporting. In addition, the Market Facilitator should clearly set out its expectations regarding submission timelines and data provision requirements to ensure consistency and transparency across all reporting parties. It would also be helpful to clarify whether the data required for the implementation tracker is in addition to the regulatory reporting outlined in the Flexibility Market Rules consultation document.

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?

We agree with the appeals process and the proposed performance arrangements for Elexon as the Market Facilitator. The Draft Market Facilitator Governance Framework Document envisages that Elexon's decision on the Flexibility Market Rules / Elexon's Market Facilitator governance documents may be appealed for a 'potential breach of existing licence condition arising from implementation of the Flexibility Market Rule (limited to DNOs and NESO)' (para 4.48, last grounds for appeal). This grounds for appeal should be expanded.

As we have highlighted in earlier responses, the Flexibility Market Rules (as proposed) may in some respects conflict with obligations arising from other higher order legal sources (i.e. primary and secondary legislation or existing contract terms). The process should acknowledge this and provide Ofgem with the explicit ability to determine appeals based on conflicts between legal obligations.

Sections 4.12 and 4.43 specify that appeals relating to the annual budget or new Flexibility Market Rules must be lodged within 14 days of publication or the relevant decision being made. We consider this timeframe to be potentially restrictive, particularly for appeals involving complex technical or financial matters that require detailed internal review and coordination. We ask the appeal window to be extended to 30 calendar days, providing sufficient time for stakeholders to assess the implications of a decision and prepare a considered response.

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

The Draft MF Governance Framework Document envisages that Elexon will input into the 'DSO incentive process, as requested by Ofgem'. As noted in our response to the Governance Arrangements for the Market Facilitator Consultation (28th April - 30th May 2025), we believe that the MF should input into the Distribution System Operation Output Delivery Incentive (DSO incentive) **through existing channels**. We do not believe a new process is needed to enable this. We would caution against

extraordinary treatment of the MF's input, as this can cause a conflict of interest given that DNOs need to retain their ability to appeal the MF's decisions. To ensure that Elexon's unique insights are captured in the standard DSO incentive process, Ofgem could consider obligating Elexon's participation and defining the objective data required in its submission.

The Draft MF Governance Framework Document envisages that the Stakeholder Advisory Board will formally input into the MF performance assessment process (para 5.11 and 5.29). It is therefore important to ensure that the MF is not involved in the SAB selection and appointment process. In our response to Elexon's recent MF governance documents consultation¹, we noted that the involvement of the MF in reviewing applications and recommending prospective Members to the Chair could undermine confidence in the independence of SAB Members from the MF.

The Draft MF Governance Framework Document states that Ofgem will issue a stakeholder survey, to gather views on how Elexon has delivered the MF role. Ofgem notes that it 'would particularly expect responses from organisations who will have worked closely with the Market Facilitator, including DNOs, NESO, flexibility service providers and trade associations' (para 5.20). We welcome this clarification.

Para 5.28 states in relation to the Stakeholder survey that: 'There are already mechanisms for stakeholders to provide views to Ofgem on DNOs and NESO, so it's important that the feedback relates solely to the operations of Elexon as Market Facilitator'. We agree with this provision.

¹ [Consultations: Flexibility Market Rules and Market Facilitator Governance Documents - Elexon](#) (1 September 2025 - 3 October 2025)

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?

We have concerns about several underlying assumptions within the impact assessment, particularly regarding the comparative costs and benefits of implementing the Market Facilitator (MF) versus the counterfactual and the assumption regarding the benefits case of delivering new products. Overall, it is unclear how the claimed benefits—ranging from £40m to £330m have

been derived from the referenced Arup report, and we urge greater clarity and justification for these estimates.

1. Assumption of Comparable Engagement and Resource Costs

As per paragraph 3.8, the assessment assumes net engagement and resource costs are broadly similar between the MF and the counterfactual. Based on the current MF proposals, we do not believe this assumption holds. We would strongly urge Ofgem to include costs associated with implementing new reporting requirements and process changes as set out in Elexon’s Flexibility Market Rules consultation into the Impact Assessment.

The current proposals introduce significant new requirements that will necessitate additional resources, including recruitment of new staff, with direct cost implications for DSOs. It is vital that the value these new rules are expected to deliver is clearly understood and justified. Elexon’s proposal based on the Flexibility Market Rules consultation appears to prioritise the collection of all available data, rather than identifying and focusing on the data that is truly necessary. The implementation costs associated with Elexon’s proposals, we believe are highly onerous. It is worrying that

Elexon has not thought about the costs and benefits associated with the proposed reporting requirements.

There is a risk that the proposed reporting framework becomes a **compliance-driven exercise with limited strategic value**—where data is collected but not actively used to inform decision-making or support market development. This could lead to a situation where reporting becomes a procedural obligation rather than a meaningful tool for improvement. Any new obligations should be proportionate, targeted, and genuinely supportive of market facilitation.

2. Delivery of New Products and Services

We are already delivering new products and services independently of Elexon's involvement. For example, we recently launched **FlexUp**, a demand turn-up market. This demonstrates that innovation and product delivery are driven by existing incentives, such as the DSO incentive mechanism, rather than by the MF itself.

While we recognise Elexon's potential role in accelerating the transition from innovative trials to business-as-usual, we do not believe the MF is a primary driver of product delivery. Its value lies more in enabling faster implementation and reducing costs for consumers, rather than initiating innovation.

We therefore recommend that the delivery of new products and services be removed from the MF's benefits case. Moreover, product delivery is not included in the MF's delivery plan objectives. The only relevant reference in the draft delivery plan is a commitment to "review the constraint management products," which does not imply responsibility for driving change or delivering new services.

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?

The proposals being consulted on by Elexon introduce significant new obligations that will require additional resources, including recruitment of new staff, with direct cost implications for DSOs. It is therefore vital that the value and costs these new rules are expected to deliver is clearly understood and justified.

We are concerned that, in its current form, the proposed reporting framework risks becoming a compliance-driven exercise with limited strategic value—where data is collected but not actively used to inform decision-making or support market development. This could lead to a situation where reporting becomes a procedural obligation rather than a meaningful tool for improvement. Any new obligations should be proportionate, targeted, and genuinely supportive of market facilitation.

NGED appreciates the ambition behind these reforms and support efforts to enhance transparency and consistency across flexibility markets. However, we would like to raise concerns regarding the proposed timelines for implementation and the associated reporting requirements, which we believe place a disproportionate burden on DSOs. The proposed obligations—particularly the requirement to submit a large amount of data within 20 working days of the rules “Created” date and to report any changes within 10 working days—are extremely onerous and feel unreasonable.

These timelines do not reflect the complexity of internal processes that DSOs must adapt to comply with the new rules. In many cases, significant procedural and system changes will be required, which cannot be implemented overnight without risking disruption to market operations. We have previously shared these concerns with Elexon as part of the consultation process.

In our responses to date, we have urged Elexon to take a pragmatic approach and consider the trade-offs between accelerating market development and imposing

extensive reporting obligations. Without sufficient time and resource planning, there is a real risk that flexibility markets stall under the weight of compliance demands. The additional costs and operational pressures must be carefully considered to avoid unintended consequences. A phased and proportionate approach would better support DSOs in meeting these new obligations while maintaining momentum in market growth.

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?

Yes, we agree with the proposed Definitions to be added to the Standard Conditions of the Electricity Distribution Licence and the ESO Licence.

NGED do not consider any further changes are necessary to the Definitions.

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?

We broadly agree that the proposed licence modifications deliver the intended policy objectives. However, we suggest the following matters are considered further:

1. Condition 55.6 should be broadened to include “obligations arising under existing agreements”. This could limit the need for appeals to Ofgem on the Market Facilitator Rules and is consistent with concerns we have raised elsewhere about conflicts between the Rules and existing contract rights.

2.	It is unclear what condition 55.7 does to alleviate the potential conflicts we have highlighted regarding conflicts with confidentiality obligations and/or data protection legislation and the Market Facilitator Rules. If the intention of the drafting is to capture these conflicts, we recommend that it says so instead of adhering inaptly, in our view, to the Civil Procedure Rules.
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?
	<p>Yes, we agree with the proposed licence condition clauses for implementation monitoring to be added to both licences, and that the current drafting delivers on the policy intent.</p> <p>NGED do not consider any further changes are necessary to the clauses for implementation monitoring.</p>
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?
	No response
Q5.	Do you have any additional comments or suggestions?
	NGED note that the proposal is for this to be Condition 55 of the Standard Conditions of the Electricity Distribution Licence. The current live version of the distribution licence extends only to Condition 52. Should this condition be implemented ahead of proposals to use either/both Condition 53 and 54, we would propose that

placeholders are inserted as “Not Used” for Condition 53 and/or 54 (as appropriate) to avoid confusion.

Concurrent Consultations and Stakeholder Engagement

We would like to highlight the challenges posed by the volume and timing of consultations related to the Market Facilitator (MF). Between September and October 2025, stakeholders were asked to respond to five overlapping consultations.

The clustering of consultations placed considerable pressure on stakeholders and limited the depth and quality of engagement. The timing also coincided with the annual tendering period for most DSOs, further constraining capacity—both for DSOs and Flexibility Service Providers. In any consultation process, whether statutory or non-statutory in nature, there must be adequate time for responses to be made by consultees. This has proved difficult in this case, particularly given the large volume of documentation being consulted on.

We are particularly concerned that smaller organisations may have faced even greater challenges in responding. While we recognise the need for Ofgem and Elexon to move at pace, there is a real risk that urgency could compromise the quality and robustness of the resulting governance framework. We encourage a more coordinated and phased approach to future consultations to ensure a more meaningful engagement across the sector.

Reporting requirements

As the Market Facilitator, Elexon plays a critical role in enabling the growth and standardisation of flexibility markets. To fulfil this role effectively, it is essential to strike the right balance between increasing market transparency and avoiding overly burdensome obligations that could hinder participation and progress. NGED firmly believes that any reporting requirements must demonstrably add value to market facilitation.

We would like to raise concerns regarding Elexon’s proposed timelines for implementation and the associated reporting requirements, which we believe place a disproportionate burden on DSOs. The proposed obligations—particularly the

requirement to submit a large amount of data within 20 working days of the rules “Created” date and to report any changes within 10 working days—are extremely onerous and feel unreasonable. These timelines do not reflect the complexity of internal processes that DSOs must adapt to comply with the new rules. In many cases, significant procedural and system changes will be required, which cannot be implemented overnight without risking disruption to market operations.

We urge Elexon to take a pragmatic approach and consider the trade-offs between accelerating market development and imposing extensive reporting obligations. Without sufficient time and resource planning, there is a real risk that flexibility markets stall under the weight of compliance demands. The additional costs and operational pressures must be carefully considered to avoid unintended consequences. A phased and proportionate approach would better support DSOs in meeting these new obligations while maintaining momentum in market growth.

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