

Market Facilitator Governance Consultation Response Form

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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

~~Yes~~/ No (delete as applicable)

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?

Consistent with our previous responses on this subject we believe it is important to be clear on the scope of the Market Facilitators role in “operations” of flexibility services. There will be benefits to be derived from establishing consistency in processes such as the consistent dispatch API that is being developed, however DNOs and NESO should remain entirely autonomous in their dispatch **decisioning** in order to remain accountable for the safety and reliability of the systems they are responsible for. Point 2.4 of the governance document draft is currently insufficiently specific and could be interpreted to include decision making – some wording should be added to make it explicit that dispatch decision making is out of scope.

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?

1. Appeal Process

We broadly agree with the appeals process as set out in the draft Market Facilitator Framework Governance Document, save that 14 days may not provide sufficient time to formulate an appeal and we would suggest that the timeframe for submitting an appeal be extended to 21 days, or 15 *working days* or “*X days or such other period as agreed with Ofgem*”.

2. Grounds for Appeal

We are broadly comfortable with the Grounds for appeal as set out in the Market Facilitator Governance Framework Document but suggest a slight widening of the final Ground for appeal against the Rules, set out at section 4, paragraph 4.48 of the Market Facilitator Governance Framework Document as follows:

- Potential breach of existing [legal or regulatory obligations] ~~licence condition~~ arising from implementation of the Flexibility Market Rule (limited to DNOs and NESO)

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

We have no other specific comments. We are supportive of the direction that is being taken to develop the Market Facilitator role.

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?

In paragraph 3.8, Ofgem assumes that costs for DNOs are not materially different between the preferred option and counterfactual. We agree that this is possible, however it greatly depends on the level of change that Market Facilitator implements through its Flexibility Market Rules. With extensive changes to the way markets operate, including system

changes and enhanced data reporting and sharing needs, DNO costs could materially increase.

The implementation of Market Rules must consider whether the requisite costs that are being imposed on DNOs are proportionate versus the benefits. As such, considering whether the actions and rules that are being imposed on DSO flexibility markets are proportionate to the size of the markets. For example, the level of reporting that Elexon is suggesting it may require through its draft Flexibility Market Rules has the potential to create a significant overhead to DNOs.

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?

We agree with the potential negative outcomes outlined in paragraph 4.7, and would highlight that the basis for quantification of benefits is highly uncertain and represents a broad range of outcomes. The Demand for Constraints analysis utilised relates to demand turn up services addressing transmission level constraints, as such it is questionable whether the value attributable is relevant to the Market Facilitators roles across DSO and NESO markets.

We agree with the overall need for the Market Facilitator role and agree that it will add value to the market. We also recognise that estimating the benefits is inherently difficult. However, we warn against the reliance on these uncertain benefits values to justify significant expenditure and intervention by the Market Facilitator in the future. Specific interventions should be assessed on an individual cost benefit analysis basis.

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?

1. We agree with the definitions of Flexibility Market Asset Registration, Market Facilitator and Market Facilitator Governance Framework Document. It would be preferable, however, for the definition of Flexibility Market Rules to include reference to “appropriate consultation with the licensee” to reflect both the intent i.e. paragraphs 3.5 and 4.33 of the Market Facilitator Governance Framework Document provide that the Flexibility Market Facilitator Rules will be developed in collaboration with impacted stakeholders/interested parties “through workshops **and consultation**”.
2. In respect of the definition of “Market Facilitator Information” we do not object to the substitution of “Information” for “Intelligence” (though we note that, whilst Ofgem has not yet published its decision in respect of RESP methodology, the definition currently under consultation in the RESP Consultation uses “Intelligence” and not “Information”, contrary to the assertion in paragraph 1.24 of the Market Facilitator Consultation Document). However, we remain of the view that Market Facilitator Information should be “relevant” and that “relevant” should form part of the definition.
3. We also remain of the view that that some categories of information should be protected whether through inclusion in the definition of Market Facilitator Information or provision within the proposed licence conditions. As drafted, the current proposed paragraph 55.7 of licence condition 55 provides very limited protection. In our response to the policy consultation, we suggested the following definition:

Market Facilitator Information means:

“such relevant information as the Market Facilitator may reasonably request to be provided by the licensee to the Market Facilitator which:

- a) Relates to the licensee’s Distribution System;*
- b) Is in the possession or control of the licensee; and*
- c) The Market Facilitator considers necessary for its implementation monitoring function .*

Such Intelligence is to be provided by the licensee in sufficient quality and format as the Market Facilitator shall reasonably request.

The licensee is not required to provide Intelligence where it is:

- a. Subject to legal privilege;*
- b. Subject to a binding obligation of confidentiality;*
- c. Commercially sensitive;*
- d. Relating to data which is owned by a third party and rights to share have not been agreed; or*
- e. In respect of, or in relation to CNI.*

4. We therefore propose that either (a) that definition is maintained or (b) in the alternative, that the paragraph 55.7 of licence condition at 55 is amended to include those protections and that those protections should be maintained across both the DNO and the NESO licence conditions as the definition in the NESO licence also includes Information relating to the Distribution system.
5. NESO is best placed to comment upon Definitions which pertain only to its licence.

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?

Part A: Flexibility Market Rules

1. **Paragraphs 55.2 & 55.4 of licence condition 55** - We agree that an obligation to comply with the Flexibility Market Rules is necessary to achieve the policy intent. However, we remain of the view, as expressed in our response to the Policy Consultation, that it is not right that the licensee should be required to accept a licence obligation to comply with the Flexibility Market Rules when those rules have not been defined, consulted upon or even broadly outlined. We are however reassured by the requirement in paragraphs 3.5 and 4.33 of the Market Facilitator Governance Framework Document that the Flexibility Market Rules will be developed in collaboration with impacted stakeholders/interested parties through workshops and consultation, and by the existence of the appeal process contained within section 4.
2. We also agree with the drafting of paragraph 55.4 of licence condition 55 which places limitations on the obligation to comply with the Flexibility Market Rules and which establishes the precedence of licensees' statutory duties and other obligations under the licence or industry codes over the obligation to comply with the Flexibility Market Rules. However, the addition of *"and in the event of a conflict, the licensee's statutory or other licence obligation will prevail"* as we proposed in our response to the informal consultation would in our view avoid any potential ambiguity.
3. It is not clear, however, how any conflict would be dealt with in practice, beyond notifying the Market Facilitator of the licensee's reliance upon paragraph 55.4 of licence condition 55, as this scenario is not addressed in the Market Facilitator Governance Framework Document.
4. **Paragraph 55.3** of licence condition 55 – We welcome the fact that that there will be an avenue for appeal against the Flexibility Market Rules as set out in the

Market Facilitator Governance Framework Document, and are comfortable with the drafting of paragraph 55.3 of licence condition 55.

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?

Part B: Implementation Monitoring

1. We do not believe that as drafted the proposed modifications fully achieve the policy intent regarding implementation monitoring.
2. **Paragraph 55.5 of licence condition 55** - At the Ofgem workshop on 9 October 2025, Ofgem confirmed that the intention of paragraph 55.5 of licence condition 55 was to ensure that Market Facilitator Information requests were reasonable, which reflects paragraph 2.25 of the Consultation Document. Proposed paragraph 55.5 of licence condition 55 as drafted, however, requires the licensee to *“within a reasonable time-frame, provide Market Facilitator Information to the Market Facilitator, as and when reasonably requested by the Market facilitator”*. In our view a plain reading of the proposed drafting is that the **timing** of the request is subject to a reasonableness test and the content of the request itself is not subject to a reasonableness test. We also remain of the view that the obligation should be for the licensee to use “reasonable endeavours” to provide Market Facilitator Information. We also believe that it would be appropriate for this licence condition to make provision for challenge to requests for Market Facilitator Information requests and that the mechanism for that challenge should be incorporated into the Market Facilitator Governance Framework document.
3. We therefore propose that licence condition 55.5 should read:

“The licensee must use reasonable endeavours, within a reasonable time-frame, to provide such Market Facilitator Information to the Market Facilitator as the Market Facilitator may reasonably request.”

4. **Paragraph 55.6 of licence condition 55** - We also suggest that minor amendments are required to improve the drafting of proposed paragraph 55.6 of licence condition 55 as follows:

“The Market Facilitator Information ~~must be~~ provided by the licensee in must be of sufficient quality and in such format as the Market Facilitator may reasonably request.”

It is unclear however what is meant by “sufficient quality” and this requires clarification, which would be appropriately included within the Market Facilitator Governance Framework Document.

5. **Paragraph 55.7 of licence condition 55** - The intent of this licence condition as stated in paragraph 1.25 of the Consultation Document is to set out the types of information that are excluded from the obligations in paragraph 55.4 of licence condition 55, in place of the protection previously provided for in the definition of Market Facilitator Information. We do not believe, however, that proposed paragraph 55.7 of licence condition 55 as drafted places sufficient safeguards around the categorisation of information as Market Facilitator Information, and the potential obligation to provide sensitive information, as the exclusion is not wide enough.
6. **Paragraph 55.7 of licence condition 55** as drafted exempts the licensee from the obligation to provide the Market Facilitator with Market Facilitator Information *“if the licensee could not be compelled to produce or give the Information in evidence*

in civil proceedings". This would at best only protect Privileged documentation from disclosure. It would not protect the licensees' own commercially sensitive information, third party information or information relating to Critical National Infrastructure.

7. Third party information will be particularly problematic where the licensee has entered into confidentiality agreements. Whilst licensees themselves may be protected from criminal sanction under s105(3)(c) of the Utilities Act for disclosure of information obtained under or by virtue of Part 1 of the Electricity Act 1989 in order to comply with their licence obligations, that does not protect licensees from potential breach of their contractual obligations.
8. In addition, disclosure of confidential information may be damaging to licensees commercial relationships and to both licensee and third-party business interests. Customers and Third parties will likely be uncomfortable that their business information is vulnerable to dissemination, and may justifiably feel that information sharing could be prejudicial to their interests. Disclosure of such information to the Market Facilitator potentially risks damaging licensees' commercial relationships and business interests and places the licensee at risk of legal action.
9. It is also not clear whether the Market Facilitator itself would be bound by the provisions of the Utilities Act 2000 and the requirement to protect information obtained under or by virtue of Part 1 of the Electricity Act 1989 and it is not known what types of information may be requested by the Market Facilitator, or how that information may be used, shared or disseminated.
10. There are no clear restrictions or safeguards around the use or dissemination of Market Facilitator Information within the Market Facilitator Governance Framework Document and there is no confidentiality agreement between the

licensees and the Market Facilitator in respect of Market Facilitator Information. In addition, as the Market Facilitator is not regulated by a licence of its own, not is not clear as to the enforcement measures that Ofgem could take against the Market Facilitator. The net effect is that, once the licensee has provided Market Facilitator Information, the licensee no longer has any control over it.

11. Finally, whereas there are established rules and procedures for document disclosure and clear avenues for challenge within the Civil Procedure Rules, which are overseen by the Judiciary, that structure and those avenues are absent from this framework and context. Consequently, confirming whether a licensee would be compelled to produce information in civil proceedings may be difficult to establish.
12. There are therefore insufficient safeguards around the use and dissemination of sensitive information and no mechanism to challenge requests within the proposed licence condition or Market Facilitator Governance Framework Document. We therefore remain of the view that, in the absence of protection for sensitive business information within the definition of Market Facilitator Information itself, protection should be included within paragraph 55.7 of proposed licence condition 55, and we propose that paragraph 55.7 of licence condition 55 should read:

55.7 – For the purposes of paragraph 55.5 the licensee shall not be obliged to provide information or data where it is:

- a. subject to legal privilege*
- b. subject to a binding obligation of confidentiality*
- c. commercially sensitive*
- d. relating to data which is owned by third party and rights to share have not been agreed; or*

e. in respect of, or in relation to CNI.

55.8 - The licensee may appeal any request for Information to The Authority in accordance with the process set out in the Market Facilitator Governance Framework Document.

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?

NESO is best placed to comment upon the terms of its licence. We agree, however, that NESO's engagement and collaboration with the Market Facilitator will be required in order to achieve policy intent.

Q5. Do you have any additional comments or suggestions?

The proposed licence condition as drafted does not make provision for licensees to make a request to Ofgem for Derogation from compliance with all or any part of the licence condition. Whilst we acknowledge that the intent is that the Flexibility Market Rules will be established through workshops and consultation, the nature, scope and detail of the Market Facilitator Rules is at present unknown and we suggest that inclusion within the licence condition of a right to apply for a Derogation would be sensible in the circumstances to enable Ofgem to release licensees from their licence obligations in the event that unforeseen circumstances or unintended consequences materialise. It is in Ofgem's gift to refuse such a request, and the inclusion of such a provision is not unusual.

We are attaching marked Appendix 1 a marked-up version of the proposed licence modification.