

Reference:



27 February 2009

Mark Feather
Director Industry Codes
Ofgem
9 Millbank
London SW1P 3GE

Dear Mark,

ELEXON RESPONSE TO OFGEM'S CONSULTATION ON THE ROLE OF CODE ADMINISTRATORS AND SMALL PARTICIPANT/CONSUMER INITIATIVES (ISSUED 19 DECEMBER 2008)

We welcome the opportunity to respond to this consultation and remain committed to making a useful contribution to the wider Code Governance Review.

In this response we've set out our views on your proposals to increase the quality, accountability, accessibility and transparency of the code governance arrangements. We've confined our comments to the BSC arrangements.

As you will see from our answers below, we are committed to delivering continuous improvement and greater customer value in all aspects of our role and services. We are already taking many proactive steps to improve accessibility, transparency and support for all our customers (including smaller parties and consumers) to help them engage effectively with the BSC. We would welcome any recommendations arising from the Governance Review that would enable us to provide increased value and range of services to the industry.

CHAPTER 2 - KEY ISSUES AND OBJECTIVES

Question 1: Are the Authority's concerns regarding the quality of analysis undertaken through the code modification processes justified?

We are aware that Ofgem has expressed concerns over recent times about the quality of analysis in reports that it has received in respect of certain codes. We believe that the active involvement of Ofgem in the modification process should help improve this situation and are pleased to note that it has rarely documented its criticism of BSC analysis (out of 230 Modifications, only one is documented – P224).

We increasingly attempt to obtain information and useful responses from the widest possible range of industry sectors, including small participants, on behalf of the Modification Groups and BSC Panel. We (and they) recognise that it is not always easy to obtain information from interested parties in relation to certain areas (for instance where the information might be commercially sensitive) or where providing it might require significant effort or resources. Our observation would also be that all parties are resource and time constrained and may have difficulty engaging with the change process – the problem is not limited to consumers and smaller participants.

Over time the way in which we engage with participants and the information and reports we prepare on behalf of Modification Groups and the Panel has been refined. We accept that Ofgem and some participants have said that modification reports generally are often complex and opaque and with the Panel's support we have constantly sought to review content and analysis. However, many of the issues on which we report are complex, involve a high degree of interdependence between Parties and are critical to participants. If there is to be transparency of the issues and considerations, then reports will have a degree of complexity. We have taken a number of steps recently to try and address the engagement issues (and have been supported in doing so by the BSC Panel) including adopting a Write for the Reader approach which has been widely supported by participants.

We attempt to provide clear, comprehensive explanations of the relevant issues, views and analysis. We recognise that over time Ofgem's focus and the type of analysis it requires in relation to certain areas seems to have shifted and we welcome and encourage the active participation of Ofgem in the modification process. This allows it to clarify its analysis needs either generally or in particular cases and that in doing so within Modification Groups or at the Panel brings some welcome transparency. It also enables us to seek confirmation that in its view the Modification Group/Panel is doing enough and, as in the case of the recent transmission losses modification, apply any feedback that is provided through the decision making process. In some (limited) instances it has been necessary to obtain external analysis and both we and the Panel remain alert to recognise and address this need.

Where issues are contentious or complex we have previously held both industry (and Panel) briefing sessions to explain what the issues are so as better to inform the consultation (and decision making) process and we also provide walkthroughs at the implementation stage so that those participants impacted by a proposal can understand the detail. We are actively examining ways in which we can use web based mechanisms (including establishing on-line issue forums) to facilitate the engagement process.

In summary the quality of the change process is highly dependent on the active participation of, and quality of information provided by, industry respondents and on our ability to engage with participants. Whilst we believe that the BSC arrangements and the way in which we administer them, by and large, meet Ofgem's requirements for inclusiveness, transparency, efficiency, thorough analysis of change, cost effectiveness, and independent, objective administration, we do recognise that there is always room for improvement. We're actively examining ways in which the reports we prepare on behalf of the Modification Groups and the Panel can be clearer and meet Ofgem's analytical requirements.

Question 2: Are some code administrators more accountable than others?

We discuss our accountability in greater detail under the heading 'Governance and Funding' later in this response, concentrating here on the points raised in Item 2.3 of your consultation document which focuses on the differences between code administrators in terms of cost and quality. It also suggests that the different governance structures increase the complexity and opacity of the modification processes.

We believe ELEXON is fully accountable. The BSC clearly sets out our functions and responsibilities in Section C. Moreover it also indicates that these should be carried out with

a view to achieving the applicable objectives set out in the Transmission Licence without discrimination and as efficiently and economically as is reasonably practicable.

Our annual Business Strategy is published and consulted on with BSC Parties. We actively seek customer feedback across the course of the year and use it to inform and shape our activities. Since our appointment as BSCCo we have consistently reduced costs and actively responded to feedback, for example in the provision of operational support managers (OSMs) for BSC Parties. This requirement is not set out in the Code but this (and other activities such as training, provision of guidance notes and workshops) is a significant value added service that we provide to help parties understand how the BSC operates.

Our activities and costs in support of the change processes are publicly reported via our monthly consolidated Change Report, individual change documents and electronic alerts. The costs of providing the required industry assurance process are entirely transparent and over time we have promoted the refinement of this service and reduced its cost. We make extensive use of our public website (www.elexon.co.uk) as a repository of all our financial information.

We encourage open dialogue with all our customers: including explaining our activities and expenditure. We are committed to meeting and exceeding our customer's expectations and our annual customer survey suggests that most feel positive about the service we provide.

Question 3: We consider that code complexity is a problem, particularly for small participants, new entrants and consumer representatives. Do you agree? How can the complexity be reduced?

Yes; but the BSC and its supporting documentation simply reflects the complexity of the design of the GB electricity balancing and settlement arrangements so the route to removing code complexity, in part, must be design simplification. The BSC specifies the rules, some of which we would agree are complex, but ELEXON's ability to propose changes to those rules is limited.

Some of the existing approaches and initiatives that we have put in place to assist all parties to cope with the inherent complexity of the BSC arrangements and rules include:

Training, guidance and advice: We provide a range of tailored training options, open seminars, and published guidance documents. We also attend external events (e.g. small supplier forums) as well as visiting individual companies to provide information and teaching on specific aspects of the BSC.

Operational support: We have a dedicated team of Operational Support Managers (OSMs) providing tailored help and guidance to all BSC Parties and their Agents. As part of the market entry and Qualification processes, we also offer dedicated operational support to all new entrants and we provide guidance to Parties and their Agents on the Performance Assurance Framework. We could consider providing a dedicated person to specifically engage with smaller parties if that was felt to be beneficial.

Technology: We've committed to using technology as a means of education and engagement and have already started to explore the use of online forums. The 'myElexon'

functionality on our website allows customers to receive tailored information and document feeds specific to their needs and interests.

Improving access to information: We proactively push key information out via circulation lists. We also seek to identify interested groups and to contact them to engage in the BSC processes. In early 2009 we will improve access to information on our website through navigation changes and will continue to improve access to our staff by publishing more contact information there. From April 2009 we are also providing a web based forum which will allow participants to debate issues and potential changes to the Code on line.

Write for the Reader: Starting with the suite of Modification documents, this rolling programme will help us improve access to information by making our documents easier to read and understand. We hope that in time it will help new parties enter the market with fewer difficulties and help existing parties interact with the BSC arrangements more frequently. This reflects our desire to enhance the accessibility and transparency of our documentation and is a direct response to customer feedback.

Meeting management: We offer remote video and telephone conference facilities for key meetings. Wherever possible we also try to align meetings, or the timing of meetings, with those taking place under other industry codes and we make any spare meeting room capacity we have available to other code administrators; revenue from this service offsets charges to BSC Parties.

Reflecting all views: In acting as an independent body we always seek to marshal the submitted views of participants rather than represent the views of any one particular sector of the industry. All of our reports set out the views of the minority and all consultation responses are attached to ensure that all views are visible to the Modification Groups, the Panel and the Authority.

Similarly, in relation to the modification procedures, Section F of the BSC sets out a clear and unambiguous change process which we adhere to, providing support and information to all interested parties. We seek to treat all equally and believe that process improvements will be beneficial to all.

We work closely with anyone wishing to initiate changes: explaining the processes and roles and using our extensive knowledge of the overall design of the BSC arrangements, processes and systems to further their understanding. We encourage Parties trying to draft their Modifications Proposals to seek our assistance where it would be helpful.

The Proposer (or their appointed alternate) generally attends each of the Modification Group meetings. Continuity of attendance is important in the context of understanding developing ideas and arguments and so, holidays and unavoidable work issues excepted, the commitment of members is sought across the length of the process. Beyond that the Modification Group meetings are open and anyone can attend (and we have encouraged them to do so). We undertake the administrative, analytical and secretarial functions and also chair the meetings so that the burden of Modification Group membership or attendance is minimised. As stated above we are examining ways in which those people who are not members of groups but who want to remain engaged with a particular issue are able to do so.

Over time we have tried to streamline the modification consultation process by setting out (and sticking to) published consultation timescales, providing contact details and providing proformas to facilitate the feedback process. All our Modification and change reports include details of named contacts who are ready to deal with any queries.

Once changes are approved by the Authority we notify BSC Parties, Party Agents and others by email and targeted circulars and provide details in our weekly Newscast publication which contains links for those who are interested to further detail on our website.

It is sometimes difficult for us to establish who is interested in a particular change issue so we do rely heavily on the self subscription approach and would welcome a dialogue with any individuals or representative groups who feel disenfranchised so that we can explain the rules within the BSC and the change processes to them.

We would also note that where we, with the support of the Panel, have tried to streamline or simplify the change processes this has not always received support from either parties or the Authority.

In summary; yes, we would agree that the BSC is, in certain areas, complex and that the change processes are detailed. Where we have been able to provide support to de-mystify these processes we have done so and would be willing to do more but our ability to simplify these areas is limited by the inherent complexity of the Code.

Question 4: Do small participants, new entrants and consumer representatives find it difficult to engage with the code modification process?

Yes, some parties have said that they find the code modification process challenging, particularly in terms of resource commitment. We've explained above how we try to alleviate industry efforts. We have had positive feedback from parties who appreciate the support they've been given and we actively seek and welcome feedback from any participant on how the processes can be further improved.

Some safeguards for small participants and consumers are built in to the BSC, although we would note that they are not explicitly referenced in the BSC Objectives. For example, the Panel, which under the BSC oversees the modification procedures, comprises industry, independent and consumer members as well as the facility to appoint a sixth industry panel member, typically one who reflects the interests of small, licence exempt parties. In this way a full range of views and expertise can be reflected in the Panel's recommendations to the Authority.

CHAPTER 3 - ROLES AND RESPONSIBILITIES OF CODE ADMINISTRATORS

Question 1: Do you agree that the quality of analysis in code modification reports could be improved? Should the role of the code administrator be changed to help enhance the quality of code modification reports?

In part we've addressed the quality points relative to Question 1 on page 1 of this response but we'd agree that there is always room for improvement and, to inform your consideration

of this issue we highlight below some of the constraints which surround any change assessment since these impact on the depth and quality of analysis undertaken. These include:

- The time available
- The quality of any data that is used
- The robustness of any assumptions that are made
- The risks inherent in the change
- The knowledge and expertise of the analysts, Modification Group members and respondents to impact assessments and consultations.

There have been occasions when feedback to the consultation process has been limited and we, with the Panel's support, have tried to elicit further information from participants, sometimes unsuccessfully. Whilst we understand the impact on central system changes we cannot speak with authority for those whose internal systems and commercial activities are impacted. As mentioned previously, there have been very few occasions on which the analysis provided in the BSC Modification Reports has been cited as being insufficient.

Whilst we understand why it happens we find it frustrating when parties, seemingly keeping their powder dry or conserving effort, respond in more detail to Regulatory Impact Assessments (RIAs) than they do the Modification consultation processes. As stated previously we have, on occasion, where the significance of the issue has merited the cost of additional expert analysis, engaged external analysts. Early, active engagement by all impacted parties and agreement on the analysis required would improve the robustness and efficiency of these processes and enable the Authority and the Panel and its Modification Groups to have a clearer and more informed view of the implications of change at an earlier stage. Producing the RIA in parallel with the BSC consultation reports would help streamline the process and address the issue that Parties waited until late in the process to submit responses. The terms of reference, agreed by the Panel at the start of the modification procedure for a particular proposal, and sometimes amended subsequently as a result of analysis or feedback, are critical to ensuring that the appropriate analysis is commissioned.

We recognise that feedback and analysis are not one and the same and would welcome an active dialogue on how analysis, when it's perceived to be deficient, could be improved before reports reach the point of no return. In this regard we see early and sustained involvement of the Authority in the Modification and Panel process as crucial. Going forward we are particularly concerned about this area in respect of the requirement to provide analysis on the impact of change on greenhouse gas emissions.

Question 2: Which of the options for changing the role of the code administrator in the modification process (critical friend or active secretariat) is most appropriate? Should different options be chosen for different codes?

We believe we have shown that, by acting beyond a secretarial role, in chairing meetings, in facilitating debate, by providing advice and by drafting reports on behalf of Modification

Groups, code administrators can have a valuable role to contribute to the efficiency, effectiveness and economy of the overall process.

Greater clarity on the elements of each approach would be helpful but, on the basis of what is said in the consultation document, we already largely deliver several of the roles assigned to the 'critical friend' and 'active secretariat' roles. There are some subtle yet material differences between these roles and these are discussed below.

Critical Friend

- We propose the Modification Group's terms of reference to the BSC Panel (via the Initial Written Assessment)
- We act as advisor on changes to the Panel and Modification Groups
- We assist participants in the drafting and development of changes prior to their formal launch through the change processes
- We work with the Modification Groups to deliver the required analysis and document all views
- We collate and clarify reasoning put forward by consultation respondents
- We help the Panel document its views and record its recommendations

The emphasis of the current BSC processes is more collaborative than the "devil's advocate" and overt challenger type role that is suggested in your document. To change the emphasis of our role in this way would impact how we interact with BSC Parties, Modification Groups and BSC Panel members. A more adversarial approach could diminish the flow of information (a prerequisite of good analysis) and may have detrimental effects.

Requiring the Code Administrator to undertake activities that test the appropriateness of the analysis being contemplated and the strength of conclusions that can be drawn suggests a model in which the administrator is more remote from the Modification Procedures. If the administrator remained integral to Modification Procedures then at times they would be judging their own analysis and conclusions. To deliver these activities would require the administrator to be fully conversant with the needs and views of the Authority as well as being fully aware of the commercial implications of each change for each party. To that end the active involvement of the Authority's representatives in the Modification Procedures would be a more efficient and effective model and one which would be welcomed by most participants.

Similarly were this proposal adopted then consideration would need to be given to the ownership of the Modification Reports. Currently, whilst authored by ELEXON, the Definition and Assessment Reports are owned by the Modification Group and the Final Report by the BSC Panel.

Active Secretariat

- We take a lead and take accountability for the quality of the assessment

- We draw up the terms of reference for the Modification Group
- We collaborate with the Modification Group to ensure that the Terms of Reference are fulfilled
- We commission external assessments where the necessary skills and expertise are not available in-house
- We collate consultation responses and seek clarifications where necessary

In summary, we already fulfil the example activities and regard ourselves very much as an active secretariat. The active secretariat role is explained as “taking the critical friend idea a significant step further” and yet our experience is that it is possible to be an active secretariat without adopting the stronger adversarial approach which could be said to be inherent in the critical friend role.

Question 3: Should the roles of the administrators of the BSC, UNC, CUSC, Grid Code, SPAA and MRA in respect of central systems management be harmonised i.e. should all code administrators either be made responsible for the related systems or should this responsibility be removed from them all?

We believe that there are transparency and information advantages in having the code administrator responsible for systems. Business decisions are better informed by parties having a clear understanding of the costs, timescales and risks. ELEXON provides this information for the central BSC systems. This is appropriate since the costs of implementing and operating any changes to these systems and processes will be borne by BSC Parties.

Similarly the disadvantages (determining the likely *central* systems costs of proposed modifications) associated with the separation between code administration and system operations do not apply in our case. What would be an issue, if our roles were to be separated out, are the increased contractual and interfaces/handoffs and potential inefficiencies arising from our inability to perform monitoring and assurance obligations.

Whilst there may be a conflict of interest between the code administrator role and system ownership under some codes we would refute any suggestion that this is the case under the BSC which makes it clear that our obligations are to procure and manage the necessary systems on behalf of BSC Parties in a non-discriminatory, efficient and economical manner. As an independent and impartial code administrator we have no vested or commercial interest in the outcome of any particular modification or in the timescale within which it's implemented. On the contrary, in procuring the AM/Dev contract for central systems we are seeking to ensure that the speed and cost of change to central systems is minimised so that of itself it is not an impediment to the introduction of change.

Furthermore, through publishing the BSC Agent impact assessments as part of the Assessment Reports we expose the costs and timings to full public scrutiny. All BSC Agents are subject to rigorous competitive procurement processes to ensure that robust terms and best value for money is achieved. The costs and speed of change have reduced over time as we have secured improved contractual terms with our agents. Since 2001 the costs of provision of central systems (CVA, SVA, Assurance (Audit, Qualification (previously Entry

processes, Accreditation and Certification) and Technical Assurance of metering) have been reduced through competitive procurement and tighter management from £25.24m in 2001/02 to approximately £16.98m in 2008/09. Further details of these reductions in contracted costs can be found in the ELEXON budget which is published annually. Copies are available from the ELEXON website at www.elexon.co.uk.

CHAPTER 4 - GOVERNANCE AND FUNDING

Question 1: Should code administrators be independent of network owners? If so, is it sufficient to have management unbundling or should the code administrator be an independent company?

Yes, and ELEXON Limited is effectively an independent company. It is managerially, financially and commercially independent from the network owner (National Grid) which exercises no control over ELEXON whatsoever. It is subject to company law and the rigors of company governance, accountability and reporting. It is also subject to the obligations in relation to accountability, independence, objectivity and transparency set out in the BSC.

It should be mentioned for completeness that while ELEXON, for purely convenience reasons at the time of NETA, was set up as a wholly owned subsidiary of National Grid, it was also set up as completely separate and independent from National Grid. The ownership is therefore of no practical significance and does not operate to reduce our objectivity, impartiality and independence. It is also notable in this regard that both the express obligations in Section C of the BSC and our Articles of Association (which cannot be amended other than in accordance with company law and the Code Modification process) keep us fully at arms length from our notional "parent" company. For example, our Board of Directors is appointed under rules within the BSC, and without any reference to National Grid. The Chairman of ELEXON is appointed by Ofgem and is also the Chairman of the Panel. Of the remaining directors, two are chosen by the Panel from among the elected Panel members and two are independents chosen in accordance with the BSC and also in accordance with the requirements of the Combined Code on Corporate Governance approved by the Financial Reporting Council. The Combined Code is applicable to "public interest" companies such as ELEXON.

We are also established as a not-for-profit organisation. This means that we do not have any overarching shareholder or corporate commercial interests that conflict with our status and duties as the independent administrator of the BSC arrangements. We believe that these factors allow us to maintain a position of commercial and political independence within the market which, given our central role in the trading arrangements, is highly valued by participants. It also permits us to ensure that we secure best value and effective change solutions from our BSC Agents.

Because of our status as an independent administrator the conflicts referred to in paragraph 4.4 of your consultation (conflict of interest in the drafting of Modifications Reports, the management of Modification meetings and the identification of Modification Proposal solutions) cannot and do not arise.

Question 2: Should all the major commercial codes have the same corporate governance structures? What is the most appropriate governance structure?

We don't have a view on whether all the major commercial codes should have the same corporate governance structures although we can see that similar or shared governance structures may facilitate code consolidation. However we note the different constituencies and roles within each code and are not clear what the consumer benefits of consolidation might be.

We would like to comment on what we see as the advantages of the BSC model over the other models set out in section 4 of your consultation.

The BSC model, as defined within the Transmission Licence and the BSC, has delivered transparent, independent and impartial arrangements, with industry input at Board level enhanced by the presence of independent Board Members.

Under the BSC, ELEXON must procure the necessary resources and services required for the proper, effective and efficient implementation of the BSC. It must do so in an independent and non-discriminatory manner. It is precluded from undertaking any business or activity other than as provided for under the BSC (although this could be seen as a disadvantage in that it may preclude ELEXON providing other services on a commercial basis which could be used to offset charges to BSC Parties). Its Chief Executive Officer is answerable to the Board but is not a member of the Board.

ELEXON's strategy must be approved by the Panel (which includes elected members as well as those members appointed by the Transmission Company, the Chairman and Consumer Focus) and the budget to deliver that strategy is approved by the Board, after consultation with the industry and the Panel. Should any increase in budgetary requirements arise ELEXON must notify all Parties and submit a revised annual budget to the Board, after discussions with the Panel, for approval.

ELEXON also publishes a headline report which summarises the topics discussed at Board meetings and the decisions reached. An annual meeting is held which both the Board and the Panel's attendance is required. The purpose of this meeting is to provide an explanation and discussion of the accounts and reports of the previous year and the strategy and budget for the current year. An annual report summarises the activities of the Board and the Panel. The Board's compliance with the Combined Code on Corporate Governance ensures good governance. The Board undertakes an annual review of its compliance with the Combined Code on Corporate Governance and that this is reviewed by the company's external auditor.

Paragraph 4.24 in your consultation suggests that the fact that the chairman of ELEXON is also the Chairman of the Panel is a disadvantage or in some way means that there is a conflict of interest. We would refute this, arguing that there cannot be such a conflict: firstly, because ELEXON's principal role is that set out in Section C1.2.1 of the Code (i.e. to provide facilities for and services to the Panel and requirement to act as the administrative arm of the Panel); secondly, because ELEXON's primary duties under the Code are to exercise its powers and discharge its responsibilities with a view to achieving the same objectives as those which govern the actions of the Panel (e.g. efficiently, economically and transparently);

and thirdly, that ELEXON has no commercial interest or other interest in “manipulating” the costs of Modification solutions, the actual solutions themselves or Modifications meetings.

Question 3: Are code administrators and the management teams for CUSC, UNC and BSC sufficiently accountable in terms of their costs and performance? Do they have clearly defined objectives and measurable performance targets?

Yes, we believe that ELEXON is accountable in terms of its costs and performance. As well as prescribing *what* we have to do, the BSC also imposes objectives and accountabilities that define *how* we should set about it, namely: *fully, promptly, fairly, economically, efficiently, transparently and in a manner that supports competition in the generation, supply, sale and purchase of electricity*. These obligations are set out in more detail below. We have interpreted these requirements together to define our core mission, as being *‘to deliver the BSC effectively, efficiently and economically, to the benefit of our customers’*. Each member of the Executive is set annual corporate objectives, including budget targets and performance against these is subject to Board oversight and we endeavour to be fully transparent about how our customers’ money is being spent, the value they get from ELEXON and our key operational and strategic targets.

BSCCo Business Strategy: There are defined requirements in the BSC for us to consult all interested parties during the development of our strategy and to seek its approval by the BSC Panel. These requirements provide formal mechanisms to ensure that the needs and expectations of our key stakeholders are factored into our budget and into our strategic plans.

Annual Budget: We are required to set a budget that will achieve the approved Business Strategy. This establishes that there are clear accountability, transparency and budgetary restrictions upon us. It also incentivises good internal cost control and rigorous internal budgetary challenge. Once the Panel approves the Strategy we finalise and adopt the Annual Budget, which is given final approval by the ELEXON Board (which has two industry members). Prior to this, the budget is also exposed to the Panel and to the industry through consultation. We effectively seek to self-impose performance measures by way of adherence to the Business Strategy and Budget. There are provisions in the Code which mean that if ELEXON does not manage its budget adequately, it must go back to the Panel in order to explain how and why it has exceeded its budget. As a result it can expect to find itself being held publicly to account for this in a rigorous and challenging manner.

Ongoing reporting: Further transparency and accountability is achieved through quarterly written plan progress updates circulated to industry participants, open sessions at the BSC Panel and invited sessions and personal contact with our customers to gain feedback and ascertain support. The quarterly reports are a BSC obligation and their contents (including reporting on agent performance, reviewing progress against budget) are specified in the Code. These reports are important for accountability, governance and transparency reasons.

Panel oversight: A number of our activities are undertaken in support of the discharge of the BSC Panel’s powers and functions. The Panel (and its Committees) therefore has clear visibility of these activities and associated costs (particularly those relating to the assessment and implementation of change). Each have oversight of particular elements of ELEXON’s

work and can require ELEXON to provide particular analysis or revise its approach and, in the case of the TDC and the Panel, determine whether, in relation to a particular trading dispute, either ELEXON or its agents are responsible for settlement errors.

Board oversight: The ELEXON Board includes members selected by the Panel from within the industry-elected Panel membership, as well as two fully independent members. This enriches company decision making and oversight with both an appreciation of industry parties' perspectives and a strong degree of challenge by individuals who are independent. As mentioned earlier, the Panel chairman (appointed by Ofgem) is also chairman of the Board which ensures accountability and transparency.

As well as tracking the organisation's progress against its BSC obligations (including those of being efficient and economic), the Board is responsible for its good corporate governance, including ensuring compliance with statutory and legal requirements, internal and external audit and the management and control of risk. The Board has also established an Audit Committee and a Remuneration & Nomination Committee.

The auditor's annual report and financial statements are published annually in June. The annual report includes a report on the Board, corporate governance and compliance with the Combined Code on Corporate Governance.

Procurement oversight: Approximately 60% of ELEXON's expenditure involves the procurement of goods or services from third parties. In recognition of this and in accordance with the requirements of Section E of the BSC, we involve industry members in the oversight of major procurements and supplier expenditure, for example through tender evaluation committees and project boards. Recent examples of where we have taken this approach include the Project Isis BPO Host procurement and BSC systems releases. We also comply with the principles of the public procurement rules and competition law. In particular, we benchmark agent costs through undertaking rigorous competitive procurements in order to ensure that best value for money is obtained for industry. Agent service levels are reported through the prescribed quarterly and annual reports.

As reported previously, these contracted agent costs have reduced from £25.24m in 2001/02 to an estimated £16.98mm in 2008/09 with a predicted budget the following year of £15.8m.

Customer surveys: The feedback received through our annual customer satisfaction and staff surveys, and our subsequent action-planning activities, also feed into our business planning cycle. We measure customer satisfaction across six service areas and use 17 KPIs to assess external perception of ELEXON's performance. Over the past six annual surveys, we have seen the majority of service areas and KPIs show improvements. We are committed to recognising and maintaining those activities that led to increased satisfaction and addressing low or decreasing satisfaction, and as well as conducting the annual survey (the full results of which are published on the website), we develop and publish an action plan that all ELEXON staff have the opportunity to contribute to.

Satisfaction across a number of areas improved again in 2008; following the significant increase in 2007, 12 of the service indicators reported another increase in our most recent survey.

Performance benchmarking: We also seek to benchmark ourselves against other organisations offering comparable 'code administrator' services in the energy industry. Our customer survey asks for views on our levels of service in comparison with organisations including Electralink, Gemserv, xoserve, and National Grid. We have also embraced the EFQM Business Excellence Model as a means to benchmark our overall performance with other high performing organisations. We recognised that organisations with a business excellence approach obtain significant benefits including improvement in financial performance, enhanced innovation and idea generation, customer satisfaction, organisational growth, employee satisfaction and involvement, efficiency, effectiveness and reliability. We are beginning to see these benefits working through and have been awarded the EFQM's Committed to Excellence status. We have also focused on improving our customer service and some of our staff have been awarded professional qualifications by the Institute of Customer Service.

Executive Team accountability: The ELEXON Executive is accountable to the Board for the running of the company - i.e. ensuring that we carry out our BSC obligations and the roles/tasks specified in our Business Strategy and have the appropriate resources to do so. The Board meets around 10 times a year to review our progress against business plans and budgets. The Board also receives the Company Monitoring Report (CMR), and tracks and influences actions taken in response to staff and customer surveys. Each member of the Executive is set annual corporate objectives, including budget targets, and performance against these is subject to Board oversight.

Question 4: Code administrators are currently funded by cost pass through, service contracts or price controls. Which of these funding arrangements is the most transparent and accountable?

When coupled with arrangements to ensure an appropriate level of oversight, consultation and inclusivity such as detailed above, we believe that the cost pass through model is the most cost effective, transparent and accountable of these options. As a not for profit organisation, we do not impose a profit margin on industry. The cost pass through model ensures that we are independent and that we do not have a conflict of interest (including any interest in sacrificing service quality and best value in order to enhance commercial profit).

It is not accurate to say that a cost pass through model can provide no incentive to improve on cost efficiency, as there will always be other relevant obligations or pressures in play. For example, as described above, our BSC obligations and mission drive us towards economy and efficiency. Our central aim to deliver excellent customer service and value has a similar effect. Most importantly, the complete transparency that cost pass through provides makes it much easier for stakeholders to scrutinise and challenge our costs, creating significant impetus for a customer focused organisation to perform efficiently.

We welcome the recognition in your document that we are already highly transparent in reporting our costs and that our Board structure provides a good level of accountability. We would strive to continue to be just as transparent about our costs under any of the funding arrangements discussed.

Question 5: Is there an argument for considering the service contract approach to funding for more codes if a degree of self governance for a code is introduced?

Although we do not currently have an explicit service contract in place with our customers (other than the BSC itself), we ensure that we clearly establish their requirements through consultation and interaction. We also seek to clearly communicate our available services to our customers. In this way we have been able to provide some services over and above those enshrined explicitly in the Code, as we have received confirmation that these services are required and valued (examples include our operational support or "OSM" service and provision of training and education to Parties). Parties have said that they value the central provision of training and advice on two counts, savings in direct costs to themselves and the benefit of receiving accurate and impartial advice.

There may be some complexities in moving to a service contract. For example, as there are no limits on the number or nature of BSC Modifications that can be raised, it would be extremely difficult to price the contract accurately without knowing how many complex and/or simple changes there would be in a year. It would be necessary to introduce arrangements such as re-opening clauses, caps and collars in order to manage such risks. It would be unacceptable for any company performing a central industry role such as that of BSCCo to be allowed to become insolvent because of the impact that would have on the orderly operation of the market.

We also provide analysis, support and education to Ofgem, DECC and other regulatory bodies and it is not clear how this would be justified and funded under a services agreement

We note that you also ask whether there would be an argument for considering moving to a service contract model if a degree of self governance is introduced. We do not believe that this would have any advantage over the present BSC model and in particular we do not believe it would provide a greater degree of control and accountability over the actions of ELEXON as code administrator than the current model.

CHAPTER 5 - OTHER POTENTIAL IMPROVEMENTS

Question 1: Should Ofgem have powers to "call in" and "send back" modification proposals? What are your views on the "call in" and "send back" options?

In principle we would have no issue with the introduction of more general "call in" and "send back" powers. The BSC already contains powers for the Authority to instruct a revised timetable where the length of the procedure exceeds certain prescribed durations. These have not been exercised to date as, when concerns have been raised, discussion has enabled positions to be explained and appropriate solutions reached.

The BSC does not contemplate a "call in" process on the grounds of inadequate or deficient analysis. If one were included, we would seek to ensure it was never exercised. We believe that dialogue with the Authority through more direct involvement in the Modification process is a more appropriate way to ensure issues are adequately addressed. There is also the

possibility that transferring ownership of the procedures may introduce a delay as the activity is re-planned and previously gathered information has to be reassessed.

Similarly the BSC does not envisage a “send back” process. Whilst again we would seek to ensure it was never exercised, we can see more obvious benefits in this proposal. Nobody wishes that a Modification Proposal be rejected on grounds of insufficient analysis, particularly where this can be practically remedied. Closer alignment of Panel and Ofgem objectives might minimise the likelihood of this occurrence. Beyond this we would again assert the primacy of good dialogue with the Authority representatives involved in the procedures.

Question 2: Should all code Panels have to publish the reasoning behind their recommendations?

Yes, we believe that any body or organisation making a recommendation should publish its reasoning. It is difficult for the basis of the recommendation to be assessed without the publication of the rationale behind the recommendation. We believe the publication of reasoning to be essential to good governance. It would also be necessary for reasons of natural justice should the Panel be given any decision making powers in relation to modifications. We note that the BSC Panel always publishes its reasons.

Question 3: Should code administrators be able to raise modifications themselves? If so, should there be limits on what modifications they can raise or should they have to gain the consent of the code Panel to the raising of the modification?

Yes, we would support a procedure which extended the ability of the Panel to raise modifications on the recommendation of its committees or ELEXON. It is difficult to see why, for the reasons stated earlier, there would be any conflict in raising proposals (or recommending that they be raised) where the code administrator is, like ELEXON, independent from Parties, including the system operator.

The BSC allows ELEXON to propose Modifications to the Panel in certain limited circumstances that are set out in BSC Section F 2.1.1 (d). The actual raising of the Modification is done by the BSC Panel as we are not currently permitted to raise a Modification Proposal.

By contrast, within the Code Subsidiary Document change processes, we can raise change proposals. Whilst some of these changes are to effect operability improvements to the processes and systems we manage, the vast majority are a result of discussions with industry participants and groups and reflect their aspirations. Having ELEXON undertake this role avoids seeking individual sponsors for a change, promotes consistency and can expedite the process. With industry (via the Panel or relevant Panel Committee) deciding the outcome of any change proposal, there is adequate accountability, transparency and other relevant checks and balances on us.

Changes introduced to the BSC are invariably more contentious than changes sought to Code Subsidiary Documents. This mirrors the fact that BSC changes are often more commercial than technical in nature. However there are situations where proposed modifications to the BSC have wide industry support (e.g. they have been recommended by an Issues Group, by a Panel Committee or highlighted through the BSC Review process) and yet individual

companies are unwilling to champion the change. Whilst this could indicate that the change is perceived as having limited benefit, it could equally reflect a reluctance to commit time and resource. In such circumstances, namely where a Panel constituted body has recommended the change, there would be benefit in allowing us to recommend that the Panel raise the Modification Proposal. We are not seeking the right to raise such Modification Proposals directly.

We also believe that using the full rigours of the Modification Procedures to address “housekeeping” changes (e.g. minor inconsistencies, typographical errors or manifest errors) is inappropriate. The regulatory burden is disproportionate and a more administrative variations process (with suitable controls) should be introduced into the BSC.

Question 4: Would it be useful to develop a code of practice applying to all code administrators? Should it be voluntary or binding?

We are committed to the continuous improvement of our customer facing services and processes and always seek to adopt best practices from within our industry and beyond. To this end we already hold regular discussions with other code administrators in order to share ideas and approaches. There are a number of examples where we have worked in conjunction with other code administrators to successfully ease the burden of industry including the alignment of market entry and performance assurance testing requirements between the MRA and the BSC, joint meetings with the MRA and Ofgem’s licensing team to educate and support potential new entrants, working with the CUSC governance group to establish how best to calculate the cost of carbon etc.

We believe that this voluntary approach is the most effective way to develop standards, while recognising the significant differences between the scope and functions of the different codes and administrators. We don’t believe that a single, binding code of practice for all code administrators is necessary or appropriate. It would be difficult to define meaningful common standards, any sanctions that would apply are not clear and there is a high risk that codifying approaches could actually stifle innovation in code administration. The expense and effort in developing, administering and ensuring compliance with any such code of practice would far outweigh any potential benefits.

Question 5: What are the most appropriate mechanisms to evaluate the performance of code administrators? Is a scorecard approach appropriate?

Yes, in principle we believe a scorecard is the right way to evaluate performance but it needs to be sufficient to balance, for example, costs versus service, short versus long term etc. We would be happy to discuss this further. We already recognise the importance of measuring our organisational performance and we employ a number of key performance indicators and stakeholder perception measures to support this.

In particular we track and report on:

- performance against budget
- compliance with our obligations under the BSC (including implementation of change)

- the performance of our key suppliers (including the BSC Agents)
- customer satisfaction against a wide range of service indicators

These areas effectively form our balanced scorecard. We are comfortable with sharing and comparing this information. Indeed we already publish much of this via our Business Plan, quarterly and annual reports (including KPIs related to contracted services) and other reports such as those outlining our customer satisfaction results and our actions in response. We also provide detailed information about the costs of assessing and implementing Modifications in our monthly Change Report published on our website. Transparency of this information is central to our aim of being customer focused and accountable and we believe that similar transparency across all codes would create further opportunities to share best practice and identify efficiencies.

Our annual customer survey measures our customers' perception of our performance in areas including:

- Cost, value for money
- Transparency
- Efficiency
- Core services (including our support to the Modifications, Change, Panel, Committee and Performance Assurance Framework processes)
- Accuracy, quality and level of information, guidance and communications
- Expertise and professionalism
- Trust and independence
- Providing relevant/appropriate services and right level of support
- Helpfulness and responsiveness
- Comparison with other industry organisations

CHAPTER 6 - SMALL PARTICIPANTS, NEW ENTRANTS AND CONSUMER REPRESENTATIVES

Question 1: Do small participants, new entrants and consumer representatives face significant hurdles in engaging with the code governance processes?

Question 2: What are the key issues that need to be addressed in order for small participants and others to better engage with the code governance processes?

Question 3: Do you have any views on the options highlighted in this chapter? Do you have any views on the advantages and disadvantages discussed under each option?

Question 4: Which options, if any, do you consider will allow small participants and others to engage better with the code governance processes?

Question 5: Are there other options which we have not yet considered which may assist small participants and others to play a fuller part in the codes governance processes?

Rather than dealing with each question on an individual basis, not least because the primary audience here is the small participants themselves, we offer the following comments.

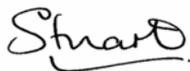
Ensuring that the code arrangements are accessible and that appropriate services and support are available to all our customers, of all sizes, is of great concern to us. We have found that the aspirations and needs that our customers have of us vary widely depending on their size, business activities and affiliations. There is no simple 'one size fits all' approach to delivering the 'right' level of support for individual parties or classes of party.

We would refer you to our response to Question 3, Chapter 1 of your consultation document (pages three and four of this response) which sets out the steps we take to actively support all parties, irrespective of size, who have an interest in the BSC. Those who have taken advantage of this support have said how helpful they have found it and these unsolicited views have been reinforced in the responses to our annual customer survey.

In conclusion, we welcome the opportunity to respond to this consultation and that on major policy issues and self governance. We are supportive of your review, and will continue to actively engage in the process. By and large we think that the BSC arrangements which Ofgem put in place some eight years ago continue to serve BSC Participants and those with a wider interest in the industry well and that our administration of those arrangements is consistent with the better regulation principles set out in your consultation document. We will continue to look for opportunities to improve the service we provide in a manner consistent with the aspirations of your review.

We would of course be happy to discuss any of the points we have made above with you in more detail if you would find that helpful.

Yours sincerely



Stuart Senior
ELEXON Chief Executive