

16 September 2009



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By Email

Dear Andy

### **ELEXON Response to Ofgem's Initial Proposals on Major Policy Reviews and Self-Governance**

We welcome the opportunity to respond to your initial proposals on Major Policy Reviews (MPRs) and a self-governance process for industry change. As we submitted a comprehensive response to your previous consultation on these issues, we've limited our further comments here to those matters where the proposed process has changed, or where the additional detail you have provided raises some further questions. This response should therefore be considered in conjunction with our earlier one.

As we stated previously, we support the overall objectives of these reforms and believe that, subject to the issues raised in our responses, they have the potential to improve the efficiency and outcomes of industry change processes. Moreover, we believe that ELEXON is well placed to play a central role in the development and operation of any such arrangements.

### **Comments on key changes to the MPR framework**

#### *Time window for industry participants to raise changes*

You propose that parties should be free to raise alternative modification proposals within a defined time window (perhaps two months) following the publication of any MPR-related directions. You also propose that Ofgem should have the power to turn down the consideration of any such alternative proposals raised within this window if they are insufficiently developed.

We would welcome some additional clarity on how this will work procedurally. For example, will there be an onus on the proposer (in the submitted proposal) or ELEXON (in our Initial Written Assessment) or the BSC Panel to flag that the proposal is related to the MPR in order to assess whether it falls within the time window? Or will this be a judgement that Ofgem will make itself? Similarly, who will be responsible for determining whether a proposal is 'insufficiently developed' and what will be the criteria to be applied in assessing this? We would also welcome your views as to the extent to which ELEXON should be expected to assist parties (in particular smaller parties) to develop any alternative MPR-related proposals, as part of the 'critical friend' role envisaged under your parallel consultation.

In the event that a proposal is to be blocked for reasons of failing either the timeliness or completeness tests, will there be a process for Ofgem to direct ELEXON/the Panel to cease

any further assessment of the proposal? If any such direction can be given early in the process, there will be less risk of any nugatory work and expense being incurred.

We would also welcome clarification on whether parties will be permitted to raise alternative modifications outside of the prescribed time window in the event of relevant new information coming to light, but where Ofgem itself has not altered any MPR-related direction that it has issued.

#### *Urgent code modification proposals*

You propose that the code parties (including relevant consumer representatives) should be able to request Ofgem's consent at any time to raise an urgent modification proposal in relation to matters that are the subject of an MPR. The existing provisions under the BSC permit any BSC Party, Consumer Focus, the Transmission Company or BSCCo (ELEXON) to recommend urgency and it is then for the BSC Panel to make a recommendation to Ofgem on whether urgency should apply and, if so, the timetable and process to be followed. We would welcome confirmation that this is the process that will be followed in relation to MPR-related urgent modifications and that no new process for parties to request urgency directly from Ofgem (i.e. without prior consideration at the Panel) is anticipated.

#### *Authority ability to alter any MPR-related direction that it has issued*

You propose that the Authority should have the ability, where necessary, to revise its policy or reconsider its MPR conclusions and issue new directions. Again, we would welcome some clarity on the procedure that will be followed if this power is to be exercised. For example, will a direction be given to the Panel to cease any further work on the previously directed modification and what will be the status of that modification in such an event? Also, if a revised direction is issued and a new modification raised as a result, will this reset the clock in relation to the time window for parties to raise alternative modifications?

### **Additional comments on the MPR process**

#### *Development of Modification Proposals*

You propose that the industry should be given the responsibility of drafting appropriate MPR-related code modifications. You also propose that Ofgem will retain the power to draft modification proposals in the event that the relevant licensee fails to develop proposals that are consistent with the MPR direction.

We believe that it would also be useful if the changes to the relevant licence conditions (and/or codes) to introduce these arrangements could be expressed in such a way as to permit the code administrator (or to permit the relevant licensees to arrange for the relevant code administrator) to draft the actual modification proposal and also to propose it or recommend it to the Panel. We see this as a fairly administrative matter once the MPR direction has been issued. This would be an efficient approach, as the code administrator is most familiar with the code rules, systems and processes and is therefore often best placed to frame an appropriate proposal. In so doing, the code administrator could also liaise with Ofgem to ensure that the proposal adequately reflects the MPR direction.

## **Additional comments on self-governance proposals**

### *Appeal forum*

We note the proposed establishment of a new forum, composed of party representatives, to act as an interim assessment body before any appeal is submitted to Ofgem under Path 3. Further consideration will be required in order to develop practicable and equitable constitutional and administrative arrangements for any such forum, given that these will have to provide for the proper representation of more than 200 signatories under the BSC. If, in practice, it is found that a substantial number of matters referred to this new body are still subsequently appealed to Ofgem, there may be a question as to whether the delay and expense of this interim appeal route is justified. We remain unclear as to what more this new forum would add to the highly consultative and discursive change process that already exists, under which all interested parties have an opportunity to contribute.

### *Panel Constitution and Voting*

You propose that the industry should draw up proposals for panel and voting arrangements and do not express a preference between representative and independent panel models. We would observe that independent panel and committee membership has been made to work effectively under the BSC and an independent Panel could be said to form the best method of ensuring that the interests of small market participants and others are protected. Also, as the Panel will need to make recommendations or decisions under all three paths (i.e. MPR, status quo and self-governance), an independent model might be the most fair and appropriate. Simple quorate majority voting, combined with a clear exposition of the rationale for every decision, has also been a core feature of BSC governance.

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



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**ELEXON Chief Executive**