

By e-mail to: energymarket@cma.gsi.gov.uk

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25 August 2015

Dear Will

BSC Panel's comments on the CMA's Energy Market Investigation provisional findings report and notice of possible remedies

Thank you for the opportunity to provide further input on the CMA's investigation. I am writing on behalf of the Balancing and Settlement Code (BSC) Panel. The BSC Panel ensures that the provisions of the BSC are given effect: fully, promptly, fairly, economically, efficiently, transparently and in such a manner to promote effective competition in the generation, supply, sale and purchase of electricity.

The BSC Panel met on 13 August and considered ELEXON's response¹ to the CMA's provisional findings report and notice of possible remedies. The Panel acknowledged that I had written to you, following its previous meeting on 9 July, to confirm that it intended to consider these matters after your deadline of 5 August and may wish to provide comments.

Having reflected on the report and ELEXON's response, the Panel endorsed ELEXON's comments. Panel Members were also encouraged by the support ELEXON has committed to the work of the CMA to date, through its submissions, data provision and attendance at a hearing, and are keen for ELEXON to assist further.

The Panel believed ELEXON's response was well reasoned and well balanced. In particular, the Panel wanted to bring to your attention that the BSC already contains provisions that address many of the concerns raised in the report. Moreover, the Panel noted that improvements needed to the existing BSC processes have already been identified and are set to be addressed. For example, work is underway to review the Modification process as part of the ELEXON/Panel work plan, and modifications relating to BSCCo Governance have been initiated. The Panel also wished to highlight to the CMA the points of correction arising from the provisional findings' report and its supporting material that ELEXON identified in its response.

The Panel had a number of comments regarding specific issues and remedies which I set out below.

Require Industry to agree plan for introduction of half hourly settlement

The Panel noted the interaction with the work of its newly established advisory group (the Settlement Reform Advisory Group SRAG). This strategic group is investigating how half hourly (HH) settlement could be enabled for customers with smart meters. This work could feed into the development of the plan and the Panel would wish ELEXON to support this. The Panel noted that strong programme management would be key to the success of this work. Additionally, the Panel noted that any decision on moving to HH settlement, should be based on a rigorous cost-benefit analysis.

¹ <https://www.elexon.co.uk/wp-content/uploads/2015/08/31-Jul-2015-CMA-response-findings-and-remedies.pdf>

Code Administration as a licensable activity

The Panel was unsure of the benefits that would be delivered by making code administration and/or implementation of code changes a licensable activity. The Panel noted that the BSC is a product of the Transmission Licence, and so falls under Ofgem's regulatory remit. Given that the code administrator's role and functions form part of that BSC, the regulator already has a general oversight of BSC compliance. This includes ensuring that the BSC Panel and ELEXON deliver the modification and change provisions in accordance with the BSC. However, the Panel supported ELEXON's view that other codes may benefit from having equivalent arrangements.

The Panel noted that careful consideration would be needed so as to avoid additional complexity and cost of administering and adhering to licences. The Panel also noted the high level of change at present and the number of cross-code issues/changes. The Panel was not clear whether a licence approach would help the development and implementation of the high number of/cross-code changes.

Ofgem granted more powers to project manage and control code change

The BSC Panel believed that Ofgem already has extensive oversight of the BSC change process including powers that can dictate the pace of BSC change. Panel Members did not believe that further regulatory oversight under the terms of a licence would provide material benefits. The Panel questioned what would be the interaction between these powers and the Significant Code Review (SCR) process.

The Panel noted that in the past Ofgem has generally been reluctant to use its existing powers, preferring to encourage the industry to find the best solutions and appropriate timetables. The Panel supported more active participation by Ofgem earlier in the development and assessment of change. In particular, the challenges faced in introducing half hourly metering for Customer Profile Classes 5-8 is a clear example where improved project management by Ofgem would have led to a more efficient and timely outcome. The Panel welcomed Ofgem's SCR approach for the introduction of reliable next day switching.

An independent Code Adjudicator

Depending on the future role of Ofgem, the Panel did not see benefits in introducing another body. One Panel member felt that it may be helpful if the ability to refer to the CMA existed, regardless of voting of the Panel and decision by the Authority. There could be benefit in widening the scope of the current appeal's process and seeing if the cost of the appeal's process is a barrier for small parties.

Revision of Ofgem's statutory objectives

The Panel noted that the Panel and Ofgem have different criteria that they apply when assessing and making recommendations on modifications. Furthermore, different code Panels have different objectives. There would be benefit in aligning all codes' objectives along with Ofgem's and recognising consumer interests within these.

The Panel also noted Ofgem's recent work on a potential further Code Governance Review. The Panel strongly believes that the industry, the regulator and DECC should all be working together to deliver better joint solutions to joint problems. The Panel welcomed the open dialogue that both it and ELEXON have with Ofgem and believed there should be more.

I would be happy to discuss the Panel's comments with you. Furthermore, ELEXON and the Panel would welcome the opportunity to attend further hearings if so required and present ELEXON's response and the Panel's comments.

Yours sincerely,

Michael Gibbons CBE
BSC Panel Chairman