

Response to Ofgem's consultation on the Market Facilitator Delivery Body

7th February 2024

About Energy UK

Energy UK is the trade association for the energy industry with over 100 members - from established FTSE 100 companies right through to new, growing suppliers, generators and service providers across energy, transport, heat and technology.

Our members deliver nearly 80% of the UK's power generation and over 95% of the energy supply for 28 million UK homes as well as businesses.

The sector invests £13bn annually and delivers nearly £30bn in gross value - on top of the nearly £100bn in economic activity through its supply chain and interaction with other sectors. The energy industry is key to delivering growth and plans to invest £100bn over the course of this decade in new energy sources.

The energy sector supports 700,000 jobs in every corner of the country. Energy UK plays a key role in ensuring we attract and retain a diverse workforce. In addition to our Young Energy Professionals Forum, which has over 2,000 members representing over 350 organisations, we are a founding member of TIDE, an industry-wide taskforce to tackle Inclusion and Diversity across energy.

Consultation overview

On 13th December 2023, Ofgem published a [Market facilitator delivery body \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/consult/condocs/mfdeliverybody/mfdeliverybody.pdf) consultation on whether the FSO or Elexon should become the delivery body for the new function of Market Facilitator (MF). Ofgem intends to make its decision in spring 2024 for the role to be operational by late 2025 / early 2026 (or sooner if possible). The consultation closes on 9th February 2024.

The Ofgem case for change

- Ofgem set out its case for reform in its Call for Input on [Future of Local Energy Institutions and Governance](#) (April 2022). Here it said that a smart, flexible energy system would require market facilitation of flexible resources and that this must be delivered by an institution with the right competence and skills.
- In its [Future of Local Energy Institutions and Governance](#) consultation (March 2023), Ofgem proposed reforms that included investing in a market facilitator role in a single, expert entity, with a mandate to grow and develop local flexibility markets. Ofgem proposed the Future System Operator (FSO) and some respondents suggested Elexon as a viable option.
- Ofgem's response, [Decision on the Future of Local Energy Institutions and Governance](#) on (November 2023) confirmed its intention to create a market facilitator.

- The current [Market Facilitator Delivery Body](#) consultation (December 2024) invites views on whether the FSO or Elexon would be best suited to take on the new function.

Consultation aims

Ofgem has identified the key functions of the Market Facilitator as:

- Strategic leadership
- Market coordination
- Implementation monitoring

The consultation sets out to:

- i) Understand stakeholder priorities for the delivery body, any concerns about the two options, and which best meets the role requirements.
- ii) Seek views on proposed design principles. These represent the attributes the market facilitator should have and behaviours it should exhibit.

Summary of Energy UK's response

Energy UK welcomes the opportunity to respond to this consultation. Members generally support Ofgem's decision that local governance reform is needed to deliver the best outcome for consumers and support the new functions of Regional Energy System Planners (RESP) and a Market Facilitator.

Energy UK thanks Ofgem for listening to industry feedback by considering Elexon for the role. We also thank both the ESO and Elexon for coming in to share their visions for the role.

Whilst a minority of members expressed a clear preference for Elexon, more members expressed more support for the FSO. However, for most, it was a finely balanced decision with many expressing concerns about the ESO's track record on delivery whilst still opting for the FSO as better placed due to its strategic oversight of the system, existing role and ability to move faster if appointed. Where a preference was expressed for Elexon, impartiality was cited as a key concern.

It was recognised that the FSO and Elexon could bring different strengths to the function and that there could be risks if either carried out the function. Given this, Energy UK's preference would be for a 'third option' in which the FSO was appointed but with a requirement for Elexon to deliver specified functions. This could include a role for Elexon as a 'critical friend' to the FSO. We acknowledge that this arrangement would need to be clearly defined, however, our view is that this would allow the market to benefit from both skill sets and capabilities whilst minimising potential risks.

(A minority of members did not agree and felt that splitting the role risked a lack of accountability).

Energy UK notes that some of the differences between members related to ambiguities within the role - its scale, scope and governance and the extent to which the remit includes strategic development of the market platform, markets and/ or products. How the role is defined and the governance framework will have a key bearing on the success of the role.

Questions

Q1. Do you agree with the proposed market facilitator design principles (in paragraphs 2.22 - 2.28)? If not, what additions or changes do you suggest?

Members generally felt that the design principles (reproduced below) were appropriate, but cautioned that any difficulty would be in the subsequent detail and implementation rather than the high-level scoping. Members request that Ofgem expand the principle of

'impartiality', noting that this might be more important for participants than for Ofgem, and highlighting the need for greater transparency on decision-making (as to why decisions are in the best interest of consumers).

Ofgem's MF design principles

- *Accountable*
- *Agile*
- *Delivery at pace*
- *Expert and strategic*
- *Impartial*
- *Inclusive and collaborative*
- *Transparent*

Along with the following wider considerations:

- *the ability to drive alignment between transmission and distribution market arrangements*
- *the ease of implementation and enabling a smooth transition (the speed and ease to get the market facilitator operational).*

Q2. Do you think some of the design principles are more important than others? If so, which should we attach greater weight to?

There was some correlation here between how members prioritised the design principles and their organisational preference.

Members who viewed *Impartiality*, *Transparency* and *Accountability* as key were more likely to have a preference for Elexon, whereas those highlighting *Expert and Strategic* generally felt that the FSO would be a better fit.

Impartiality and *Transparency* were felt to build trust, and *Accountability* (to both Ofgem and the market) to drive performance.

Members prioritising *Expert and Strategic* suggested these were key to both open markets and a wider ability to horizon-scan to ensure that the MF can iteratively adapt products, markets, and IT platforms to the changing system.

Inclusive and Collaborative was also highlighted. Optimising flexibility will require the MF /FSO to work collaboratively with industry to develop and keep reiterating markets and services.

Whichever organisation is appointed, members recommend that Ofgem consider an additional mechanism here to improve governance and the transparency of decision-making and industry collaboration. This could, for example, require the MF to provide specific reasoned responses to consultations, including why particular issues or courses of action have been discounted or included within proposals / developments. An example of this approach can be found in the draft text in Article 13 of the EU demand response network code:

- *All systems operators, responsible for developing the joint proposal for the common national terms and conditions shall duly consider the views of stakeholders resulting from the consultations prior to its submission for regulatory approval. In all cases, a justification for including or not the views resulting from the consultation shall be provided together with the submission of the proposal and published in a timely manner before, or simultaneously with the publication of the proposal for terms and conditions.*

Members' view of the role is one of a neutral market facilitator that focuses on laying the foundations necessary for a diverse range of current and future market actors to participate

in markets. A successful MF will need to be inclusive of industry stakeholders views and the governance arrangements should support building a collaborative and consensual approach that can effectively deliver the strategic objectives efficiently.

Q3. How important is it for the market facilitator to be able to align transmission and distribution flexibility market arrangements? Why?

Members view this as highly important, noting there is no comprehensive approach to tackle this (bar the ongoing Open Networks primacy work), and that non-aligned markets (and ESO exclusivity requirements for some products) are becoming an issue that is blocking the development of effective DNO markets and flexibility providers.

Whilst there is frustration with the limited progress here, it is recognised that the ESO is doing some work in this area and, as such, may be best suited to deliver change faster.

Examples here include:

- MW Dispatch (MWD) constraint management service with NGED and UPKN, which looks to manage MW flows in an economic merit order based on the lowest marginal costs,
- Local Constraint Market – the ESO is working with DNOs to support providers to work across both markets (in different settlement periods). This includes the implementation challenges involved in managing the potential risk of distribution-connected asset turn-up (for the LCM) on the distribution network.
- Project Commander - this NGED-ESO project aims to ‘*develop an engineering-based roadmap of the preferred ESO/DSO coordination scheme*’ (due February 2024).
- In Q2, 2023, the ESO set up a 5-person Flexibility Market team. An early output will be a draft flexibility strategy published in February 2024.
- Stakeholder engagement - As a service provider, the ESO has engaged in discussions on revenue stacking across different markets

Q4. How important is ease of implementation and enabling a smooth transition when considering the market facilitator delivery body? Why?

Not all members agreed that ease of implementation/ smooth transition should be prioritised. Members favouring Elexon generally felt that selecting the right entity here outweighed the need for early implementation.

All agreed that organisational competency and expertise coupled with inclusive governance arrangements was the priority with most agreeing that the new role should be active in line with the timelines set out by Ofgem.

Members for whom early delivery was important cited the need to mitigate near-term risks in the market such as the issues between different flexibility products and services, the limited visibility of distributed-connected assets (to both the ESO and DNOs), and the potential for non-linear take-up of LCTs and associated impact on the networks. Some noted that the process of setting up the FSO would be more straightforward as it could be led by Ofgem via a license change rather than a Balancing and Settlement Code (BSC) modification.

As a new role, ‘transition’ was generally less of a concern, apart from in the context of the Open Networks project. Here, members noted that it would be important for the appointee to give strategic direction here as early as possible to prepare the ground for the MF role.

Q5. Do you agree with our assessment of Elexon's suitability for the market facilitator role? If not, why not?

In general, members agreed with Ofgem's assessment and Elexon's suitability for the MF role.

Elexon is well regarded by members and received praise for its role as a Code Administrator and for more recent roles (for example, administration of the Capacity Market Advisory Group). There was also strong support for Elexon's market design expertise with members agreeing that the Ofgem assessment underplays this. Elexon's technical expertise on baselining and settlement were also noted as important areas of expertise for the MF.

Elexon received particular praise for the expert but neutral facilitation role that it plays in the code modification process. Members value Elexon's pragmatic approach. However, whilst members agreed that Elexon has an effective approach to stakeholder management, it was noted that it does not currently need to engage with as diverse a set of stakeholders as the ESO and that it could therefore be viewed as less experienced in this respect.

A further area of particular strength that some members felt that Elexon could offer here was that of a 'critical friend' to the FSO. The need for this role was a recurring theme in member discussions here. This is the point noted in the consultation document in 3.84 about the risks of the FSO '*marking its own homework*'.

However, whilst Elexon was generally viewed to have performed well, its functions are far narrower than the ESO's broad remit and, much like the FSO, it could have its current resources stretched with its upcoming work on major industry programmes such as Market Wide Half Hourly Settlement (MHHS) and Code Reform.

Members agreed that the MF set-up, governance and ability to align transmission and distribution market arrangements would be more challenging for Elexon than for the FSO. Also, whilst it was noted Elexon already collaborates well with both the ESO and DNOs, some members queried whether Elexon would have the authority to resolve the fundamental governance issues that have hampered the Open Networks project.

Q6. Do you agree with our assessment of the FSO's suitability for the market facilitator role? If not, why not?

In general, members agree with the assessment and with the FSO's suitability for the MF role. As highlighted in the assessment and in our response, the FSO has unique strengths that it could bring to the role. However, members also have concerns which they feel should be addressed if the FSO were to be appointed (either singly or in partnership with Elexon):

Members flagged up with concerns with the FSO taking on the role. These concerns can be categorised as follows:

- i) Track record on delivery
- ii) Track record on delivering IT solutions
- iii) Impartiality
- iv) Transparency
- v) Collaboration

Delivery

There was strong consensus that in some areas, the ESO's delivery has made areas of the market more rather than less challenging to operate in. The key example cited here was the ESO's performance in its role as the Delivery Body for the Capacity Market. Concerns here included a lack of consistency in implementing rules, interpretation of the rules that

sometimes went beyond policy and not listening/ acting on user concerns. These issues were viewed to have increased the costs of participants acting in the market.

IT solutions

There was similarly strong concern about the ESO's track record with procuring and delivering IT solutions (with the CM Portal cited as the key example here). The ESO's work on the Open Balancing Platform came in for praise but it was noted that the solution was almost immediately taken offline after launching as it was not working correctly.

Impartiality

Many members expressed concerns about the FSO's ability to be impartial – due to its monopsony role; concerns that culturally, there could still be a tendency to favour transmission over distribution solutions; and that staff transferring to the FSO would continue to have an enduring material interest in National Grid's transmission assets due to their pensions (this was viewed as an issue during gas network privatisation).

Transparency

Some members felt that ESO does not listen to industry (for example, not acting on concerns from participants citing systems/processes not working effectively). There was a view that this is not visible to the regulator and, that this could be exacerbated with the FSO's increase in powers. Elexon's potential to act in a 'critical friend' role here was highlighted as a potential way to manage this risk.

There was also however, praise for the ESO's Operational Transparency Forum and the range of datasets that the ESO publishes (these members felt that the ESO is improving here and that the issue was more about consistency across services than at an organisational level).

Collaboration

Whilst there are examples of strong collaboration with industry (for example, the Demand Flexibility Service, where the collaboration resulted in high take-up), members also gave examples of services where they felt that concerns were routinely overlooked without sufficient explanation being given (the ESO's role as the CM delivery body came up repeatedly here). Here members suggested a need for more consistency across teams/ the ESO.

Q7. Do you believe Elexon or the FSO is better suited to take on the market facilitator role when considering the design principles and wider considerations?

Whilst a minority of members expressed a clear preference for Elexon to take the role, for most members, it was a more finely balanced decision, albeit with slightly more support for the FSO.

In recognition of this, it is Energy UK's view that a 'third option' might be best – for the FSO to be the lead body but with a requirement for Elexon to deliver certain aspects of the role and to serve as a 'critical friend' to the FSO in its role here.

A minority of members did not agree that the role could be split. Whilst acknowledging the risks, our view is that a collaborative approach, (if clearly defined, and with appropriate governance) would allow the market to benefit from both skill sets and capabilities whilst minimising potential risks of either organisation taking on the role alone.