



Via EMAIL only

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Ref : Market Facilitator Delivery Body Consultation

Thank you for the opportunity to respond to the "Market Facilitator Delivery Body Consultation"

Please find below E.ON's response.

Summary

Following on from our response to the Call for Input informing the creation of a Market Facilitator (MF), we endorse the objectives which have been set out for this role and agree with the market issues it is looking to address.

Since one of the key endeavours of the MF will be to ensure flexibility markets are accessible to all - with a level playing field for all market participants - we do have a concern that the MF's remit seems limited to only require "relevant licensees" to adopt the outputs of its role.

We cannot see "relevant licensees" defined within the Market Facilitator Delivery Body Consultation. However, the use of this term would suggest that any non-licensed flexibility market participant (e.g. Aggregators, TPIs, Energy Management Businesses) may not be subject to the very laudable ambitions Ofgem is looking to achieve. Having a standardised market, free of distortions should extend to all participants: those who are licensed and those who are not. Without this fully comprehensive approach, the MF's role risks being devalued/undermined and, at worst, could result in a failure to protect flexibility participants from irresponsible partakers. This could also stifle competition and innovation in the products and services to consumers.

Overall, we believe that, subject to Ofgem and the ESO/NESO¹ providing robust assurances that the concerns we have set out in our responses below would be addressed, the NESO would be a better enduring candidate for the MF role.

¹ For clarity, this is referred to as the FSO within the Consultation. We are using the term NESO in this response, as per the recent notification of the name change.

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We do, however, support the Energy UK position that the optimal set-up would be for the two organisations - the NESO and Elexon - to work collaboratively, with Elexon acting as a "critical friend".

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?

We agree with the proposed MF design principles (in paragraphs 2.22 - 2.28). Whilst it is helpful to set these out, there will clearly need to be robustly defined, agreed, metrics against which these would need to be assessed.

We also strongly support the two "wider considerations" expressed in the Consultation.

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

We do not necessarily think that some of the design principles are more important than others. However, it could be argued that there is overlap between a number of them. For example, agility and delivery at pace are - at least - complementary, as are accountability and transparency.

As we will outline in more depth when considering Ofgem's two nominated prospective MFs, impartiality would be particularly pertinent as a principle were the NESO to be appointed.

We also support the view put forward via Energy UK that it is not necessarily consistent with the notion of impartiality, for the MF role to be that of a "decision-maker". Instead, we see it as delivering recommendations and steering flexibility market participants towards optimal and fair outcomes. This differentiation can be addressed through a robust governance structure.

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

We believe that it is imperative for the MF to be able to align transmission and distribution flexibility market arrangements. As we move away from electricity networks built around large thermal generators and towards an increasingly granular energy and ancillary services market, the importance of addressing the current state of poor alignment becomes more critical than ever.

Whilst there have been some efforts made in this space via the Open Networks workstream, there are few tangible outcomes at this stage. This means that achieving this alignment through the MF's envisaged role will be critical to its success.

There is an encouraging example of the ESO's intent to achieve greater transmission/distribution network collaboration in a product such as the Local

Constraint Market. However, as this has moved into the delivery stage, issues around how ABSVD should be accounted for, as well as the very narrow parameters for success - i.e. measured solely via a £/MWh comparator against the BM - highlight that this is still an embryonic marketplace. We would have liked to see a more mature transmission/distribution product which takes into consideration other valuable deliverables such as participants' ability to provide low carbon flexibility and other highly valuable ancillary deliverables such as inertia. To us, this suboptimal design is an indicator of the extent to which the ESO's transmission/distribution collaborations are largely at the prototype stage and we are of the view that this would need to be addressed were it to become the MF.

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

Ease of implementation is clearly an important consideration in the sense that it is likely to have an impact on the timeline for putting in place a MF. It may also have cost implications, in the sense that the more straightforward it is to instigate the chosen entity into its role as MF, the cheaper this process may be.

However, ease of implementation should not be the over-riding factor and should not come at the expense of setting up an effective facilitatory role. After all, if the MF is effective and efficient, this avoids the need for any retrospective intervention which would be of benefit to all.

We assume by "smooth transition" Ofgem are principally referring to the ambition that the implementation of a MF is not disruptive to the flexibility marketplace as it stands. We support this objective as it would be counter productive for any of the reforms under consideration to disrupt the progress - albeit imperfect - that has been made so far.

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

We largely agree with Ofgem's appraisal of Elexon's suitability for the MF role. We accept the position set out within the Consultation that the regulatory and governance framework under which Elexon operates mean that it is likely it would take longer to be operational as a MF than would the NESO. However, as we have explained in our response to Question 4, we do not believe this should be the over-riding factor upon which any decision is based.

There are also some other considerations to bear in mind around accountability. Whilst it is true that Elexon not being licensed means Ofgem currently have fewer "levers", this could be addressed via a different governance set up. Furthermore, as Elexon will become an industry owned body (albeit with complete operational independence), it could be argued that this enhances the ability of industry to hold it to account. This could become more pertinent as the NESO transition to being wholly Government owned.

Our own experience of Elexon is that they have a proven record in delivering the majority of their responsibilities to a high standard. We therefore do not believe that the requisite upskilling could not take place. We do acknowledge however, that this [upskilling] would be required to a greater degree than were the NESO appointed as MF. In particular, this would be relevant when considering Elexon's ability to align transmission and distribution market arrangements, and when engaging with a diverse set of flexibility market participants.

We agree with the Energy UK position that Elexon has performed its role as Code Administrator and administration of the Capacity Market Advisory Group, well. We also agree that this means Elexon could excel in the role of a critical friend to the NESO - please see our response to Question 7 for more detail around this.

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

We agree with Ofgem's assessment of the NESO in terms of its suitability for the MF role. It will, indeed, be in a unique position - as the NESO - to have the whole system oversight which is so essential. It is also already making progress towards transmission/distribution alignment, as outlined in our earlier commentary. We also agree that the new statutory duties around Net Zero and consumer interest assigned to the NESO via the Energy Act add significant weight to its credibility as a suitable candidate for the position.

If the NESO were appointed as MF, we would also urge Ofgem to work with industry to ensure any conflicts of interest arising from its position as a procurer of flexibility were suitably managed. This is a key concern for us.

We do have some broader concerns, as well, which we believe would need to be addressed were the NESO to be appointed in role.

These centre principally on these themes:

Communication:- there is strong internal feedback (from operational colleagues) that the ESO's comms in relation to markets/products are not consistent, and that there are examples of short notice given over changes to products/services which may have a material impact. A recent example has been the changes announced around DfS target volume.

There is also consensus that, whilst the ESO's publications are generally high quality, the level of detail/volume of pages within some of these - such as the Markets Strategy Roadmap - could be prohibitive for the new market entrants the MF should be supporting when in place. This also extends to the ESO's approach to Consultations. The language and format of the documents which underpin these is far from accessible to those outside of the industry. Since so much of the MF's role will require the ability to communicate effectively with stakeholders both inside and outside of the industry, we believe this is an area which would need to be addressed.

Response to Feedback: - again, based on feedback from internal colleagues, there is a strong perception that the ESO's approach to engaging and managing stakeholders is an area which requires improvement. We have multiple examples relating to this, the most compelling of which relate to a lack of engagement over repeated concerns raised over the highly manual systems underpinning the Capacity Market (CM), as well as administratively onerous CM prequalification process. Whilst some of these short-comings have now been addressed, the timeframe for action has been protracted. We do, however, recognise that the ESO are endeavouring to become more collaborative - as evidenced through their Constraints Collaboration programme - and see this as an encouraging step.

IT: - as per our earlier commentary, several of the ESO's IT systems are antiquated and inadequate (for example, the CM Portal) and would need to be significantly upgraded to be able to deal with the highly granular flexibility markets which are envisioned throughout Ofgem's literature. This could add to the expense of the NESO under-taking the MF role. Nonetheless, we believe that this cost would need to be incurred by the NESO regardless of whether they take on the MF role and so do not see it as a reason not to appoint them to this position.

Impartiality: - it is encouraging to see Ofgem addressing the issue of impartiality within this Consultation. As the ESO transition to become the NESO and move under full Government ownership, this concern becomes more material. However, as the Consultation alludes to, an appropriate governance structure should largely mitigate this risk. We do, nonetheless, hold the view that there would need to be not only a set of processes and procedures designed around ensuring the ESO [as MF] would be impartial, but also measures put in place to ensure that any cultural legacy relating to the organisation's history as a transmission network monopoly in England and Wales is managed accordingly.

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?

Overall, we believe that, subject to Ofgem and the ESO providing robust assurances that the above concerns would be addressed, the NESO would be a better enduring candidate for the MF role. The key over-riding factors behind this viewpoint are its ability to have whole system oversight, as well as its statutory duties under the Energy Act.

We believe that, in order for such an appointment to be successful - and in view of the NESO's seemingly ever-increasing remit - appropriate resource would need to be put in place upfront.

As per our comments against Question 6, this includes adequate investment in IT systems. Whilst we have stated that such expenditure is likely to be needed in a counterfactual whereby the NESO is not made MF, since these costs will be ultimately funded by consumers, it is essential that Ofgem can demonstrate that the MF will be adding value to flexibility markets. As such, tangible measures of success, drawn up through industry consultation, should be in place and form part of the monitoring processes.

We also agree with the Energy UK position that the optimal set up would be for the two organisations - the NESO and Elexon - to work collaboratively, with Elexon acting as a "critical friend". We believe that, as part of this, Elexon should take on the primary responsibility for collaboration with industry (where it has a solid track record), as well as monitoring the effectiveness of the NESO against an agreed set of metrics and within a robust governance structure.

Central to the success of such a collaboration would be clearly defined roles and responsibilities between the two organisations. We also believe having a process in place to manage any conflicts would be useful, such as an agreed escalation procedure whereby issues can be taken to DESNZ or Ofgem to arbitrate if necessary.