

By email to energymarket@cma.gsi.gov.uk

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Dear Will,

BSC Panel's comments on CMA's Energy Market Investigation: provisional decision on remedies

At its April meeting, the BSC Panel received an update from Ofgem on the Code Governance Review proposals it has put forward in the context of the CMA's provisional decision on remedies. Panel Members noted that ELEXON (as BSCCo) had already responded to the CMA with its views and felt that there would also be merit in the Panel providing the CMA with its collective view.

The BSC Panel's main observations on the provisional remedies relate to the concept of code administrators as licensed bodies, and the incentives and sanctions that would be applied if code administration was subject to a licence of its own rather than existing as a function of the Transmission Licence. The Panel noted that under the current arrangements, the BSCCo provides a good service which is reflected in measures such as its annual customer survey results. The Panel voiced concerns around the possible unintended consequences of a licence arrangement and questioned how financial penalties would be funded given that, in the case of the BSC, ELEXON is a not for profit organisation funded by the industry. As such, any financial penalty would be paid for by industry (and, ultimately, consumers).

The Panel also considered how, under the proposed remedies, the strategic direction of the code administrators would be determined. The Panel observed that the proposals envisage a scenario where both Ofgem and Code Administrators would have the ability to raise modification proposals to fulfil a strategic direction. In the Panel's view, this could create further tension.

The Panel also noted that the proposals increase Ofgem's capacity to steer industry change, and give industry very limited rights of appeal. The Panel felt that powers given to Ofgem should have checks and balances and that thought should be given to mechanisms for enabling rights of appeal and independent adjudication over certain Ofgem decisions.

The Panel shares the view already expressed by ELEXON that the overall outcome of the CMA should be to reduce complexity and costs to existing parties and new entrants, to facilitate competition and not to have the opposite effect. The Panel believes that there is a need for caution with radical changes. In this context, it noted that the Significant Code Review was introduced as a mechanism to aid large scale strategic change and that perhaps it would be more efficient to look at this than move towards licensing.

The Panel looks forward to the publication of the CMA's final report and will continue to keep abreast of developments and support the CMA's work in any way it can. I would be happy to discuss the Panel's thoughts and observations with you on its behalf and the Panel would like to invite you to a future Panel meeting to discuss in person.

Yours sincerely,

Michael Gibbons CBE FEI

Chairman, BSC Panel