

ELEXON COMMENTARY ON THE DEFINITION REPORT FOR P28: REVIEW OF GOVERNANCE AND MODIFICATION PROCEDURES

INTRODUCTION

At its meeting of the 23 August 2001, the Panel agreed that, as part of the assessment of Modification Proposal P28, a commentary on the proposal should be provided by ELEXON, given the company's integral role in administering and supporting the BSC governance procedures. The views of interested parties, the BSC Panel and a preliminary view from Ofgem are also being sought in parallel.

BACKGROUND

In compiling this note, the context in which ELEXON has considered its views is that of ELEXON's primary duties in respect of the governance arrangements under the BSC. These duties may be summarised as follows:

- Supporting the Panel and Panel Committees in discharging Panel responsibilities under the Code.
- Secretarial and administrative support to the Panel and Panel Committees
- Analytical and administrative support to the Modification Procedures.
- Provision and procurement of resources, services and systems to implement the Code.

A more comprehensive description of ELEXON's duties is provided in Appendix I.

EXPERIENCE TO DATE

At the time of writing, some 37 modification proposals have been considered and the Panel has held some 15 meetings at which Modification business has been discussed. Furthermore, the Panel has met to discuss other business on some 30 occasions (some of these meetings being convened after the designation of the BSC, but before the live operation of the BSC arrangements). Although the expectation was that the Panel would meet on a monthly basis the volume of work (and in particular that relating to Urgent Modifications business) has been such that a number of additional meetings and telephone conference calls were necessary. Panel Committees have also been held on a regular basis since April 2001. All parts of Panel meetings where non-urgent Modification Proposals have been discussed have been held in open session, as this is expressly provided for under the BSC. In addition, the Panel has exercised its discretion under the BSC to stipulate that all Modification Group meetings should be held in open session.

The first few months of operation of the Modification Procedures has given rise to a significant body of development work across most aspects of the balancing and settlement arrangements, demonstrating that interested parties now have a real opportunity to drive change. The procedures have been proven to be generally workable, although the workload to support the process has been extremely high both for the Panel and ELEXON staff throughout the Company. Some areas of concern have emerged and potential refinements to the process are being pursued within the existing provisions of the Balancing and Settlement Code. A number of Urgent Modification Proposals have been progressed within timescales of one to six weeks depending on the complexity of the issues raised and the degree of impact

on central and other systems. Considerable work has been required in developing the remaining Proposals, some of which entail significant changes such as changes to the price calculations, dual contract notification and the extension of the definition of central systems.

A number of different Modification Groups have been established to take forward the proposals raised to date. Where possible, Groups specialising in certain subject areas (for example, credit, contract notification, pricing, and governance related issues) have been asked to take forward consideration of related proposals. The Modification procedures specified in the BSC require Modification Group members to be available to consider a particular Proposal throughout its lifecycle. Some Group members have found it difficult to commit to the level of involvement required to date.

In addition to operation of the Modification Procedures, the Panel has many other responsibilities under the BSC, including the setting of a number of key parameters and approving changes to systems and documentation. The parameters to be set include the Balancing Reserve Level (BRL), Credit Assessment Load Factors (CALF) and the Credit Assessment Price (CAP). The Panel also acts as an appellate body to hear requests for redetermination of CALF values and referrals of Trading Disputes. These responsibilities have generated an extremely large workload for both the BSC Panel and ELEXON in supporting the Panel. In order to ensure the full and timely discharge of these functions, the Panel has established four Panel Committees (ISG, SVG, PAB and TDC) and has delegated responsibility to those bodies to take many of the decisions listed. To date, all meetings of the Panel and Panel Committees where these matters have been discussed have been held in closed session, as open sessions are currently precluded by the BSC.

SPECIFIC COMMENTS

The P28 Definition Report identified that the proposal addresses three broad areas of potential change; openness of meetings (of the Panel, Panel Committees and Modification Groups), constitution and operation of Panel Committees and Modification Groups and amendment of the Modification Procedures. ELEXON has considered the issues raised in these three areas and makes the following observations on each:

Openness of Panel, Panel Committee and Modification Group Proceedings

ELEXON believes that the ability for parties to attend Panel meetings and Modification Groups considering modifications business has helped to ensure transparency of the Panel's decision-making and to assist the industry in increasing its understanding of the BSC and associated issues. ELEXON supports the extension of this approach to other non-confidential Panel and Panel Committee proceedings. ELEXON would suggest that the opportunity to attend meetings should be extended to all interested parties, not just BSC Signatories, since it is the broader constituency that is consulted on modification proposals.

However, the Panel and Panel Committees must retain the flexibility to expedite decisions and, hence, on occasion, it should be recognised and accepted that it may not be practical to hold a meeting in open session (for example, where telephone conference facilities are used). Furthermore, any Panel or Panel Committee business that is clearly confidential must be held in closed session. ELEXON would also note that, alongside any tangible benefit, consideration should also be given to any implications for the costs, logistics and practicalities of modified arrangements.

With regard to the ability to speak at meetings, ELEXON would suggest that this facility is limited to points of process. Otherwise, the pre-eminence of consultation as the basis to inform decisions would be undermined. If contributions to Panel or Panel Committee proceedings became seen to be of potential advantage to attending parties, this mechanism would grow in significance and reduce the standing of the consultative process. The Panel consults parties on all modification proposals and has generally adopted a consultative approach to taking other decisions. The cost and time (and hence the efficiency) of meetings would be likely to deteriorate if there are insufficient controls on the ability of attendees to address meetings.

Modification Groups/Standing Groups

The formal creation of generic Modification Groups, to be called Standing Groups, appears to be sensible. Indeed this would largely be a reflection of current practice, whereby related modifications are submitted to the same Modification Group to ensure consistent treatment. Holding these meetings on fixed dates would assist both the industry and ELEXON in planning activities. However, the Panel must retain the ability to establish additional Modification Groups outside of this framework and/or to schedule ad-hoc meetings of the Standing Groups to progress Urgent Modification Proposals or Modification Proposals that do not naturally fall within the remit of any of the predefined Standing Groups.

The potential for improving the constitutional arrangements of Modification Groups is acknowledged. However, ELEXON would wish to be assured that if such changes were to be progressed, that they would neither result in any diminution of the pre-eminence of consultation in the Modification Procedures, nor create arrangements that could give rise to discrimination or bias.

If self-selection (as opposed to Panel nomination) is to be adopted, as with invitations to Panel and Committee meetings, this facility should be extended to all interested parties. However, it is not clear that the quality of contribution to Modification Groups would necessarily increase under this arrangement; as is acknowledged by some who support this initiative, there may be times when no invitees attend, or that attendees are there to learn, rather than contribute.

Another aspect of this proposal is the provision for discussion of issues ahead of any Modification proposal emerging. This, in principle, is allowed for now in that there is no prohibition against groups of interested parties convening to discuss such matters outside of the BSC framework. Hence, the nub of the proposal is whether such meetings should be supported by the Panel and ELEXON and be circumscribed by terms and conditions set down in the BSC. Such an arrangement would give standing to these discussions and there would need to be careful consideration of the potential for undue discrimination. There would be cost implications and potential resource implications for ELEXON. There is also the question of efficiency. One mechanism that could assist in mitigating these risks would be to ensure that the Panel exercised appropriate control over the terms of reference and agendas for these Standing Groups, but that in turn might inhibit the flexibility that the Proposers seek to achieve.

Finally, if the present obligations and independence requirements placed on Modification Groups were to be removed then there is the issue of on whom the responsibility of ensuring that Proposals are progressed and consulted upon lies. It might be inappropriate for the

Standing and Modification Groups to make recommendations if attendees are no longer obliged to be impartial and not indemnified. An alternative could be for ELEXON to make a recommendation to the Panel drawing in the advice and views from the Standing Groups. As the proposals stand at present ELEXON would fulfil this role, acting as the 'agent' of the Panel. In practice this may look little different to present, as ELEXON produces all the Modification Group reports, consultation documents and analysis. However, ELEXON would suggest that, if this were to be progressed, it would be appropriate for ELEXON to remain impartial. In recognition of this, it is suggested that, whilst conclusions may be drawn in reports to the Panel, recommendations relating to the merits of a proposal should not be made. An example of this would be to conclude that a majority of Modification Group attendees considered the weight of argument to be in favour of a Modification, but avoid making the recommendation that the Panel should commend the proposal to Ofgem. Such an approach might make the Panel's role more onerous.

Amendment of the Modification Procedures

Finally, in respect of potential changes to the Modification Procedures, ELEXON would support any procedures, so long as they met the pre-requisites described in Condition 7A.4 of the Transmission Licence and, where applicable, better achieved the Applicable BSC Objectives (which is to say, in practice, that they were more efficient and did not imply any undue discrimination).

However, in arriving at any such conclusion, due cognisance of the ongoing evolution of the arrangements, within the context of the existing BSC, should be taken into account. For example, ELEXON is currently considering streamlining reports and consultation documents, and is considering how Initial Written Assessments could focus on clarifying the detail of a Modification Proposal, allowing for a quicker progression to Assessment for many proposals. Other initiatives could also be considered, such as refining when consultations take place to ensure that optimal contributions are forthcoming (the BSC does not mandate that consultations take place at the earliest opportunity). ELEXON would suggest, therefore, that any assessment of modified arrangements against the existing arrangements should take due account of these potential improvements.

ELEXON also recognises the potential benefits of being able to consider a number of options, rather than always being limited to one Alternative Modification Proposal. However, ELEXON would wish to make the observation that progressing many alternatives could imply progressing many impact assessments and preparing many assessment reports, and so on. Hence, if it were clarified that more than one alternative was possible, it would be prudent to build in some protection against a multitude of options emerging, causing severe impacts on cost and efficiency. Clearly a number of options can be considered at an early stage in the development of a Modification Proposal, but every effort should be made to limit the number of alternatives emerging from the process.

Appendix I: ELEXON Obligations Under the BSC

As described in clause 1.2.1 of section C of the BSC, the primary role of ELEXON is to provide and procure facilities, resources and services required for the proper, effective and efficient implementation of the Code. These resources should include those required by the Panel and Panel Committees.

Furthermore, ELEXON is obliged to exercise its powers and discharge its functions and responsibilities with a view to achieving the following objectives:

- That the Code is given effect fully and promptly and in accordance with its terms
- That the Code is given effect in such manner as will facilitate achievement of the objectives (so far as applicable to the manner in which the Code is given effect) set out in Condition 7A.3 (a) to (c) of the Transmission License
- That the Code is given effect without undue discrimination between Parties or classes of Party
- Consistent with the full and proper discharge of the functions and responsibilities of the Panel and BSCCo, that the Code is given effect as economically and efficiently as is reasonably practicable
- Subject to the express provisions of the Code and to any other duties of confidence owed to third parties, that there is transparency and openness in the conduct of the business of the Panel and BSCCo

More particularly, as described in clause 3.1.1 of section B of the BSC, ELEXON has specific obligations that are of relevance to the modification arrangements under the BSC:

- To advise the Panel and keep it advised as to and in respect of the matters which it is necessary or appropriate that the Panel should consider in order to discharge the Panel's functions and responsibilities in accordance with the Code
- To provide or arrange the provision of such facilities, resources and other support as may be required by the Panel to enable the Panel or any Panel Committee or Modification Group to discharge its functions and responsibilities under the Code
- To provide secretarial and administrative services in connection with meetings of the Panel and Panel Committees and Modification Groups, including the convening and holding of such meetings and taking and circulation of minutes
- To provide or arrange the provision of facilities resources and other support in connection with the procedures for modifying the Code in accordance with Section F.

Finally, ELEXON may make recommendations to the Panel as to possible Modification Proposals in the circumstances mentioned in clause 3.8.8 of section C and clause 2.1.1 of section F of the BSC.