



January 2003

MODIFICATION REPORT
MODIFICATION PROPOSAL P112 –
Removing the obligation on new
BSC Parties acceding to the BSC
Framework Agreement to comply
with Section A 2.2.5

Prepared by ELEXON on behalf of the Balancing
and Settlement Code Panel

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I DOCUMENT CONTROL

a Authorities

Version	Date	Author	Signature	Change Reference
0.1	12/12/02	ELEXON		ELEXON Review
0.2	17/12/02	ELEXON		For Consultation

Version	Date	Reviewer	Signature	Responsibility

b Distribution

Name	Organisation
Each BSC Party	Various
Each BSC Agent	Various
The Gas and Electricity Markets Authority	Ofgem
Each BSC Panel Member	Various
energywatch	energywatch
Core Industry Document Owners	Various

c References

Ref.	Document	Owner	Issue Date	Version
1	BSC Panel Paper 52/020	ELEXON	14 November 2002	FINAL
2	P112 – Initial Assessment	ELEXON	12 December 2002	1.0

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1 SUMMARY AND RECOMMENDATIONS

1.1 Recommendation

On the basis of the analysis undertaken in respect of this Modification Proposal during the Initial Assessment Phase, and the resultant findings of this report, the Balancing and Settlement Code Panel ('the Panel') recommends that:

The Proposed Modification P112 should be made with an Implementation Date of 15 Working Days after the day of an Authority decision.

1.2 Background

Modification Proposal P112 'Removing the obligation on new BSC Parties acceding to the BSC Framework Agreement to comply with Section A 2.2.5' (P112) was raised on 27 November 2002 on behalf of the Panel, following ELEXON's recommendation to the Panel at its meeting of 14 November 2002 that a Modification Proposal be raised (Paper 52/020, Reference 1). An Initial Written Assessment (IWA) was submitted to the Panel on 12 December 2002 (P112 – Initial Assessment, Reference 2), where the Panel agreed with ELEXON's recommendation that P112 should proceed directly to the Report Phase since the changes proposed by the Modification are of a minor and inconsequential nature. After consultation with interested parties, the Panel considered the draft Modification Report at its meeting of 16 January 2003 and determined to make the recommendations set out above.

1.3 Rationale for Recommendations

P112 seeks to remove the obligation on new BSC Parties acceding to the BSC Framework Agreement to comply with the IPR Litigation Requirements document (and related undertakings of confidentiality) as currently required under paragraph A 2.2.5 of the Balancing and Settlement Code ('the Code'). The IPR Litigation Requirements document refers to a legal dispute which has now been resolved, and is therefore no longer relevant to new Parties acceding to the Framework Agreement.

The Panel therefore believes that a modification to the Code, to reflect the fact that compliance with A 2.2.5 is no longer necessary for new Parties, would better facilitate the objective in Condition C3(3)(d) of the Transmission Licence – i.e. promoting efficiency in the implementation and administration of the balancing and settlement arrangements. The removal of the requirement to comply with paragraph A 2.2.5 would reduce the administrative burden on both new Parties wishing to accede to the Framework Agreement and ELEXON's administration of the accession process. P112 has no impact on any of the other objectives, as set out in Condition C3(a) to (c).

The proposed changes have no impact on any Party or BSC Systems. The effect of the changes is to increase efficiency in the administration of BSC processes and, accordingly, the Modification Proposal has been raised under paragraph C 3.8.8 of the Code with a view to increasing efficiency and better achieving the objective in Condition C3(3)(d).

2 INTRODUCTION

This Report has been prepared by ELEXON Ltd., on behalf of the Panel, in accordance with the terms of the Code. The Code is the legal document containing the rules of the balancing mechanism and imbalance settlement process and related governance provisions. ELEXON is the company that performs the role and functions of the BSCCo, as defined in the Code.

This Modification Report is addressed and furnished to the Gas and Electricity Markets Authority ('the Authority') and none of the facts, opinions or statements contained herein may be relied upon by any other person.

An electronic copy of this document can be found on the BSC Website, at www.elexon.co.uk.

3 HISTORY OF PROPOSED MODIFICATION

At the meeting of the Panel held on 14 November 2002 ELEXON recommended that a Modification Proposal be raised in accordance with paragraph F 2.1.1(d)(iv) of the Code. These provisions provide the Panel with the authority to raise a Modification where to do so would better facilitate achievement of the objective of 'efficiency in the implementation and administration of the balancing and settlement arrangements' or would have the purpose 'to rectify manifest errors in or to correct minor inconsistencies (or make other inconsequential changes) to the Code'. The Panel agreed with ELEXON's recommendation to raise a Modification, and P112 was raised on behalf of the Panel on 27 November 2002.

An IWA of P112 was presented to the Panel at its meeting of 12 December 2002. The Panel determined that P112 should proceed directly to the Report Phase in accordance with paragraph F 2.7 of the Code. This decision was made in view of the guidance provided in paragraph F 2.2.4, which states:

'For the avoidance of doubt, it is expected that the Panel would usually proceed directly to the Report Phase pursuant to paragraph 2.2.3(b)(iii) where the Modification Proposal is of a minor or inconsequential nature and/or where the recommendation which the Panel should make to the Authority in relation to such Modification Proposal would generally be considered to be self-evident.'

Accordingly, a draft Modification Report was prepared and issued for consultation on 17 December 2002. A summary of the responses received can be found in Section 6 of this report and copies of all responses are attached as Annex 1.

4 DESCRIPTION OF PROPOSED MODIFICATION

P112 seeks to remove the obligation on new BSC Parties acceding to the BSC Framework Agreement to comply with the provisions of paragraph A 2.2.5 of the Code. Paragraph A 2.2.5 currently requires that a person wishing to enter into or accede to the BSC Framework Agreement and become a Party to the Code must comply with the requirements set out in the IPR Litigation Requirements document (and related undertakings of confidentiality). The IPR Litigation Requirements document refers to the litigation brought by Optimum Solutions Limited (OSL) against two Pool members (the OSL Claim) regarding alleged misuse of OSL's confidential information.¹ OSL claimed that the system implementing the 1998 Trading Arrangements was designed using confidential information developed by OSL and that its patents would be infringed by the performance of Stage 2 Settlement. There was also a threat that proceedings might be brought against the industry generally. New Parties to the Code were therefore requested to sign the IPR Litigation Document ensuring confidentiality in respect to the dispute.

The breach of confidence action was struck out and there has been no appeal by OSL. OSL subsequently went into liquidation, the process of which is now close to completion, and the patents

¹ The scope of the background information supplied is necessarily restricted by the confidentiality restraints associated with the litigation.

owned by OSL have recently been purchased from the liquidators by ELEXON Limited. Following resolution of the OSL Claim the contents of the IPR Litigation Requirements document and related confidentiality undertakings are no longer relevant to new Parties acceding to the Framework Agreement. P112 proposes to amend the Code to reflect this fact and thus reduce the administrative burden on both new Parties wishing to accede and ELEXON's administration of the accession process.

5 ASSESSMENT

The proposed changes are of a minor and inconsequential nature, and have no impact on any systems or processes other than ELEXON's.

During the Initial Assessment of P112, the following minor impacts on ELEXON working procedures were identified:

- There will be a minor impact on the register of BSCCo obligations, and it is estimated that half a man day will be required to make the necessary changes;
- There will be a minor impact on ELEXON Strategic Commercial Services who will need to ensure that the OSL litigation clause is removed from any future confidentiality undertakings/contracts, and this would become standard practice should P112 be approved.

One further minor issue was identified during the drafting of legal text:

- ELEXON has sought legal advice from the solicitors instructed to defend the OSL claim regarding whether current BSC Parties should remain bound by their existing confidentiality undertakings in relation to the IPR Litigation Requirements document. The advice received is that it would be desirable if these undertakings remained in place in part to enable ELEXON to exert continuing control over what information is disseminated regarding the litigation and associated proceedings. Rather than removing these requirements from the Code or applying changes retrospectively, it is therefore proposed that a new paragraph be inserted into the Code stating that the requirements contained in A 2.2.5 shall not apply to new Parties acceding to the Framework Agreement.

ELEXON recognises that there may be some Parties who have recently acceded to the Code but who have not yet signed the confidentiality undertakings outlined in A 2.2.5. The legal text for P112 was therefore drafted to stipulate a date, to be determined by the Panel, after which Parties acceding to the Code will not be obliged to comply with these requirements. At its meeting of 12 December 2002 the BSC Panel agreed ELEXON's recommendation that this date be the same as the Implementation Date of P112. Should P112 be approved by the Authority, the legal text to give effect to the Proposed Modification will therefore be updated to replace the current bracketed instruction with the Implementation Date of P112. For example, if an Authority decision to approve P112 was received on 3 March 2003 the square brackets within the legal text would be replaced by '24 March 2003' as the Implementation Date of the Modification.

One minor issue was also identified after the production of the IWA:

- ELEXON identified that the reference to 'Section A 2.2.5' within the proposed legal text should be replaced with 'paragraph 2.2.5' to ensure consistency with other existing terminology within the Code. The Panel noted that this amendment was minor and inconsequential, and agreed that the change be incorporated into the legal text to be

issued for consultation within the draft Modification Report. The legal text provided as part of this report has therefore been amended to include this change.

All of the above issues were discussed at the Panel meeting of 12 December 2002. The Panel were satisfied with the responses provided to address these issues and confirmed their recommendation that the Proposed Modification should be made.

6 SUMMARY OF REPRESENTATIONS

[Summary of responses to consultation on Draft Modification Report to be inserted here, with copies of all responses attached as Annex 1.]

7 LEGAL TEXT TO GIVE EFFECT TO THE PROPOSED MODIFICATION

7.1 Conformed Version

Attached as separate document (see Annex 2 to this report).

ANNEX 1 – REPRESENTATIONS

[Insert copies of representations on draft Modification Report]

ANNEX 2 – CONFORMED LEGAL TEXT

Attached as separate document.