
Meeting name VASMG
Date of meeting 18 September 2003
Paper Title IDEAS FOR CONSIDERATION – LEGAL IMPLICATIONS
Purpose of Paper For Discussion

1. INTRODUCTION

- 1.1 This paper states the legal implications that arise from certain ideas suggested the VASMG by at its first meeting.
- 1.2 The paper focuses only those ideas that were prioritised as “high” by the VASMG and covers those legal matters which the VASMG should take into account when considering those ideas.

2 PUBLIC PERFORMANCE NAMING (CONGRATULATORY OR OTHERWISE)

- 2.1 A system of public performance naming (whether congratulatory or otherwise) must be objective, i.e. there must be an objectively assessable breach by a particular Party. Such a system must not require a subjective judgement to be made by the Performance Assurance Board (the “PAB”).
- 2.2 In defining the objectively assessable breach the following factors should also be taken into account. The compensatory regime of the current Supplier Charges system. Are the correct amounts being redistributed to Suppliers?
- Is the incentive element of the current Supplier Charges system working?
 - A system of public performance naming should not automatically apply to all Serials and standards, but only those Serials and standards that can be objectively assessed.
- 2.3 Once the hurdle of an objectively assessable breach has been overcome, the second issue to consider is confidentiality. Who do the VASMG want to disclose any performance naming data to?
- 2.4 If it is decided that the performance naming data is to go to the public at large then the Code would have to be amended to include, amongst other things, the possibility for deemed consent of Parties in relation to the release of the performance naming data and for a specified purpose.
- 2.5 The second possible option is that the VASMG may wish for any performance naming data to be restricted to Parties only and /or non-Parties, the latter having made the appropriate undertakings as regards confidentiality. Disclosure to such classes of persons is in line with the classes of persons to whom data of this type is currently made available under the Code.¹

¹ Following changes introduced by Approved Modification P114, which has not yet been implemented.

- 2.6 Thirdly, the VASMG may wish to consider when analysing a system of public performance naming, a mechanism that does not involve the release of confidential information, for example, by introducing new standards and conducts.

3 EXCLUDING ERRANT SUPPLIERS FROM RECEIVING FUNDS FROM THEIR OWN SUPPLIER CHARGES

- 3.1 Further legal analysis will be required regarding the implications of this option. However, such an analysis is more appropriately conducted, as the VASMG formulate the detail of a mechanism that excludes errant Suppliers from receiving funds from their own Supplier Charges. The VASMG may also wish to consider the complexities that may result in the application of such a mechanism.

4 REMOVING THE CAPS FROM CURRENT SUPPLIER CHARGES

- 4.1 At this stage, the only legal comment is that the VASMG in conducting its analysis of this option, must bear in mind that the Supplier Charges must represent a genuine pre-estimate of loss, with or without CAPS.

5 MAKING SUPPLIER AGENTS PARTIES TO THE CODE

- 5.1 At present a Generator or Supplier of electricity is required as a condition of its licence to be a Party to the BSC Framework Agreement. The Framework Agreement is the agreement by which the BSC is made binding between the Parties. Furthermore, it is a condition of each licence that each Party to the Framework Agreement must comply with the Code. Accordingly, Party Agents cannot be compelled to sign up to the Code, as their activities are not licensable. In order to compel Party Agents to become signatories to the Code, a change would be needed to primary legislation.
- 5.2 On a commercial level, Suppliers may end up having to pay increased costs, as Party Agents would probably increase their costs to reflect their exposure under the Code to the acts of Suppliers and other Party Agents.

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