
Meeting name BSC Panel
Date of meeting 14 October 2004
Paper Title GSMG ISSUE 9: 'REVIEW OF ASPECTS OF THE MODIFICATIONS PROCESS'
Purpose of Paper For Information

Synopsis Standing Issue 9 was raised on 20 July 2004 by BizzEnergy in order to allow a Standing Modification Group to undertake a review of Section F ('Modification Procedures') of the Balancing and Settlement Code. The Governance Standing Modification Group met on 5 August 2004 to consider Standing Issue 9, and this paper summarises the Group's discussions and conclusions. The GSMG agreed that a change to the current Code process for 'housekeeping' Modification Proposals would be desirable; specifically, the removal of the requirement for an Initial Written Assessment for such Proposals. The GSMG also noted that various issues relating to Modification Proposal Implementation Dates are proposed for further discussion under Issue 10.

1. BACKGROUND

- 1.1 At its meeting on 15 January 2004, the BSC Panel requested that BSCCo review its operational experience of the Modification Procedures as laid out in Section F of the Balancing and Settlement Code ('the Code') – in order to identify any potential changes which could provide increased efficiency and effectiveness in the processing of Modification Proposals. Eight potential issues were identified and described by BSCCo within an 'Issues Register' which was presented to the Panel on 8 April 2004 (see Panel Paper 78/014, References 1 and 2).
- 1.2 The Panel noted that the potential issues identified by BSCCo provided a good starting point for a review of Section F, and recommended that they be submitted to a Standing Modification Group for further discussion (see Panel Minutes 78, Reference 3).
- 1.3 Standing Issue 9 was therefore raised on 20 July 2004 by BizzEnergy (Reference 4) in order to allow the Governance Standing Modification Group (GSMG) to further investigate these issues, as well as any additional Section F issues identified by the Group. Standing Issue 9 also sought to consider whether efficiency lessons could be learned from the processes for amending other industry codes, such as the Grid Code and Connection and Use of System Code (CUSC).
- 1.4 The GSMG met on 5 August 2004 to consider Standing Issue 9, and details of the Group's membership are included as Annex 1. The Group's discussions focused on the eight issues identified within the BSCCo register, and two additional issues which were raised at the meeting. The ten issues fall broadly into the areas of legal text, Implementation Dates and progression of Modification Proposals.
- 1.5 The GSMG agreed that the aim of its discussions was to consider potential Code changes in respect of each issue, and in each case to agree whether a Modification Proposal would or would not be desirable.

1.6 Summaries of the GSMG's discussions and recommendations for each issue are provided below.

2. ISSUE 1: AMENDMENT OF LEGAL TEXT IN MODIFICATIONS WITH THE AUTHORITY

- 2.1 The GSMG noted that no formal process currently exists for amending legal text in respect of Pending Modification Proposals which are with the Authority for decision. The Group considered whether the lack of such a process results in the risk of legal text becoming incorrect due to the subsequent approval of other Modifications which impact its wording or cross-referencing (known as a change in the 'baseline' of the Code). The Group also noted that previous Modification Proposal P94¹ had been raised by the Panel to introduce a process for legal text to be amended following the submission of a Modification Report to the Authority, but that this had been rejected by the Authority on the grounds that the circumstances under which such a process should apply needed to be more tightly defined.
- 2.2 The GSMG agreed that any process to correct legal text once with the Authority should be transparent, and should therefore provide for an industry consultation on the proposed amendments. However, members of the Group remained concerned that the Authority's decision-making timetable (e.g. decision cut-off dates, or the desire to implement a Modification in time for a particular season or event) might not always allow the opportunity for such further consultation, and that what had been intended as an efficiency measure might end up impacting Implementation Dates and creating uncertainty for Parties.
- 2.3 Some members of the GSMG also reiterated the concern raised in the P94 decision letter that a Modification Proposal is ultimately its legal text, and that only non-material errors should be allowed to be corrected after submission of a Modification Report. The Group agreed that what constituted a 'material' change could be a subjective judgement, unless strict criteria were applied – and therefore considered whether such criteria could be based on BSCCo's existing criteria for 'housekeeping' Modifications.
- 2.4 However, the GSMG considered that the need to correct pending legal text due to changes in the Code baseline would be a rare event, since the issue had only arisen four times (all close to Go-Live) in respect of P34, P36, P61 and P71.² Moreover, the Group suggested that P34, P36 and P71 had been unusual cases in that these Modifications had been closely related to each other, and that the likelihood of such a situation occurring again was small.
- 2.5 Given the minor nature of the errors within the scope of such a potential process, the GSMG believed that these would not affect the intent of the legal text and could therefore be adequately dealt with under the existing 'housekeeping' process for Approved Modifications.
- 2.6 However, the GSMG noted the importance of a stringent review process being applied to legal text by BSCCo, Modification Groups and the Panel, to ensure that such text is correct prior to its submission to the Authority.

¹ Modification Proposal P94 'Introduction of a Process to Allow the Panel to Recall Modification Reports from the Authority to allow the Legal Drafting to be Corrected if Working Assumptions Prove to be Incorrect'.

² Modification Proposals P34 'Transfer of imbalances caused by Balancing Services to the Transmission Company Energy Account', P36 'The generation of Bid-Offer Acceptances relating to energy delivered as a result of providing Applicable Balancing Services', P61 'Ad Hoc Adjustments to Settlement involving material errors without resorting to Ad Hoc Settlement Runs' and P71 'Transfer of imbalances caused by Balancing Services to the Transmission Company Energy Account'.

- 2.7 On balance, the GSMG therefore agreed that a Modification Proposal to allow amendment of legal text in Pending Modification Proposals **would not** be desirable.

3. ISSUE 2: AMENDMENT OF LEGAL TEXT IN APPROVED MODIFICATIONS AWAITING IMPLEMENTATION

- 3.1 Following on from Issue 1, the GSMG also noted that no process currently exists for BSCCo to amend errors in the legal text of Modification Proposals which have been approved but not yet implemented – other than to raise a new Modification Proposal. Where the error does not fall within the ‘minor inconsistencies’ or typographical errors covered by ‘housekeeping’ Modification Proposals, the current process also relies on a BSC Party being prepared to raise the ‘correcting’ Proposal. The GSMG considered whether the current requirements result in the risk of no ‘correcting’ Proposal being raised, and that Parties may therefore be asked to implement processes based on legal text which is known to be incorrect.
- 3.2 The GSMG considered the example of P166, which was raised in order to correct an unintentional effect of the P123 legal text.³ One member of the GSMG, who had been a member of the P123 Modification Group, noted that the problem with the P123 legal text had been identified at an early stage of its implementation. This member therefore argued that it would have been more efficient for BSCCo to be able to correct the unintentional effect at that point, rather than having to rely on a Party to raise a ‘correcting’ Proposal and wait for this to be progressed through the Modification Procedures.
- 3.3 However, as for Issue 1, the majority of GSMG members agreed that such problems with legal text were rare events and could be adequately dealt with under the existing process whereby BSCCo reports the issue to the Imbalance Settlement Group (ISG) or Supplier Volume Allocation Group (SVG). These members considered that, if the issue was material, a Party would raise a Modification Proposal to correct the text – and that this would most likely be the Proposer of the original Modification, since they would have a particular interest in ensuring that it was given full effect. The majority of members also agreed that it was important for any material changes to approved legal text to be fully transparent, and therefore considered that raising a new Modification Proposal remained the most appropriate route.
- 3.4 The GSMG also reiterated the importance of a stringent review process being applied to legal text by BSCCo, Modification Groups and the Panel, to ensure that such text is correct prior to its submission to the Authority.
- 3.5 On balance, the GSMG therefore agreed that a Modification Proposal to allow BSCCo to amend legal text in Approved Modification Proposals **would not** be desirable.

4. ISSUE 3: AMENDMENT OF LEGAL TEXT DUE TO OPERATIONAL ISSUES (ISG/SVG-RAISED MODIFICATION PROPOSALS)

- 4.1 The GSMG noted that any operational issues identified by BSCCo with regard to legal text are currently presented to the ISG and SVG for information. As with Issue 2, in such circumstances ISG and SVG are reliant upon a Party to raise a Modification Proposal in order to resolve the

³ Modification Proposals P166 ‘Removal of unintentional effects of P123 to allow Supplier BM unit DC values to be revised downwards during a BSC Season’ and P123 ‘Assessment of Credit Cover following a change in a Party’s Portfolio’.

- issue. The Group considered whether the current process results in the risk that no such Proposal is raised, and whether allowing ISG and SVG to recommend a Modification Proposal to the Panel would enable operational issues to be addressed in a more timely and efficient manner.
- 4.2 The GSMG considered the example of the Trading Disputes Committee (TDC), which already has the ability to recommend Modification Proposals to the Panel in connection with Trading Disputes. The Group noted that the only Panel Committees which are currently explicitly recognised by the Code are the TDC and the Performance Assurance Board, and that the ISG and SVG would therefore need to be independently defined (along with a process for voting on decisions) as part of any Proposal to allow these Committees to propose Modifications to the Panel.
- 4.3 The GSMG noted that, if the operational issue identified by the ISG or SVG is material, its members always have the option to raise a Modification Proposal in their capacity as BSC Parties. It was argued by those who were also members of ISG/SVG that this process has worked well in the past for issues such as those addressed by P140 and P166.⁴ The Group therefore questioned whether an ability for the ISG and SVG to recommend Modifications in their own right would offer any additional cost or efficiency benefits to industry.
- 4.4 Moreover, whilst the GSMG agreed that the decision by the ISG or SVG to recommend a Modification should be unanimous, it was suggested that by their nature operational issues were likely to be contentious and that reaching such unanimity might be difficult. One member of the Group was also concerned that such an ability might place an additional administrative burden or a conflict of interest on BSCCo in drafting and presenting the relevant paperwork.
- 4.5 One member of the GSMG, who was also an ISG Member, suggested that the most appropriate route for any operational issues identified by the ISG or SVG would be to raise an Issue for consideration by a Standing Modification Group. This member argued that such a route would enable Standing Groups to consider various solutions to the issue without being constrained by the specific wording of a Modification Proposal. BSCCo noted that the ISG and SVG are currently unable to raise Standing Issues in their own right, and therefore queried whether the GSMG would support the raising of a Modification Proposal to allow Panel Committees to raise these Issues. However, the GSMG considered that such a Proposal would still require the costs and effort involved in defining the ISG and SVG (including their voting procedures) within the Code. The Group believed that the present arrangements, whereby an ISG or SVG Member can raise a Standing Issue in their capacity as a BSC Party, has been demonstrated to work well under Standing Issues such as Issue 3.5 Moreover, the Group considered that the current route did not represent an administrative burden for Parties, since it believed the effort required to draft and submit a Standing Issue is minimal.
- 4.6 On balance, the GSMG therefore agreed that a Modification Proposal to allow the ISG and SVG to recommend Modifications to the Panel and/or to raise Standing Issues **would not** be desirable.

⁴ Modification Proposals P140 'Revised Credit Cover Methodology for Interconnector BM Units' and P166 'Removal of unintentional effects of P123 to allow Supplier BM unit DC values to be revised downwards during a BSC Season'.

⁵ Issue 3 'Credit Cover for Interconnector Users' arose from discussions at the ISG and was considered by the Settlement Standing Modification Group (SSMG). The SSMG recommended that a Modification Proposal should be raised, and the Proposer of Issue 3 therefore subsequently submitted P140.

5. ISSUE 4: CONSTRUCTION OF IMPLEMENTATION DATES

- 5.1 The GSMG noted that BSCCo's current practice regarding the construction of Implementation Dates uses a formulaic approach of either 'X Working Days following an Authority decision' or two fixed Implementation Dates with respective decision cut-off points. The Group considered whether this approach contains the risk that a decision may be 'timed out' if the second decision cut-off is passed, resulting in the Authority having to reject a Modification Proposal on procedural grounds rather than on its merits against the Applicable BSC Objectives. This situation has occurred in respect of three Modification Proposals since Go-Live: P80, P82 and P87.⁶
- 5.2 The GSMG agreed that BSCCo's current practice has the advantage of providing certainty to participants regarding potential Implementation Dates. However, some members of the Group argued that requiring the Authority to make a decision by particular dates was inconsistent with the Transmission Licence, and under certain circumstances could constrain the Authority from being able to approve a Modification. These members suggested that the introduction of an appeals mechanism for Authority decisions in April 2005 could result in more decisions being referred back to the Authority and effectively 'timed out' in the manner of P82. Other members considered that the current process provides an adequate timescale for the Authority to reach its decision, that a change to a rolling 'back-stop' Implementation Date would result in market uncertainty regarding the potential content of Releases, and that any risk posed by the appeals process could not be assessed until closer to implementation.
- 5.3 The GSMG noted that BSCCo's construction of Implementation Dates lay outside its immediate area of consideration (potential changes to the Code) since it was a matter of working practice and therefore that **no Modification Proposal was required** to change this construction. The GSMG considered that an alternative means of preventing Authority decisions from being 'timed out' would be to introduce a Code process for amending Implementation Dates for Pending Modifications (similar to the Code's existing process for Approved Modifications). However, the Group noted that this approach had been rejected previously by the Authority in its decision on P93.⁷
- 5.4 The GSMG also noted that a paper concerning the construction of Implementation Dates was due to be presented by BSCCo to the Panel at its August 2004 meeting. The majority of the GSMG therefore agreed that further discussion was not appropriate at this time. However, some members expressed the view that any change to working practices could increase uncertainty and therefore should be a matter for industry consultation.
- 5.5 At its August 2004 meeting, the Panel agreed that it did not believe a change to the construction of Implementation Dates to be desirable at this time. A new Standing Issue (Issue 10) was subsequently raised by National Grid Transco in order to undertake further GSMG discussion of this issue.

⁶ Modification Proposals P80 'Deemed Bid/Offer Acceptance for Transmission System Faults', P82 'Introduction of Zonal Transmission Losses on an Average Basis', and P87 'Removal of market risk associated with operation of a Generator Inter-Trip Scheme'.

⁷ Modification Proposal P93 'Introduction of Process for Amendment of Proposed Modification Implementation Dates'.

6. ISSUE 5: REQUIREMENT FOR IMPLEMENTATION DATE WHERE NO LEGAL TEXT

- 6.1 The GSMG noted that the Code currently requires an Implementation Date to be provided for all Modification Proposals submitted to the Authority, even where the Authority has agreed that no legal text is required. The Group considered whether this requirement results in unnecessary costs or inefficiencies in the Modification Process.
- 6.2 The GSMG noted that provision of an Implementation Date is a requirement under the Transmission Licence. The Group considered that this requirement is not particularly onerous for BSCCo, and therefore that any small efficiency gains resulting from its removal would be outweighed by the time and costs involved in changing the Transmission Licence.
- 6.3 The GSMG therefore agreed that a Modification Proposal to remove the requirement for an Implementation Date where there is no legal text **would not** be desirable.

7. ISSUE 6: CRITERIA FOR DEVELOPING ALTERNATIVE MODIFICATIONS

- 7.1 The GSMG noted that the Code contains two sets of requirements relating to Alternative Modifications as follows:
- (i) A Modification Group shall *develop* an Alternative Modification where it 'as compared with the Proposed Modification, would better facilitate achievement of the Applicable BSC Objective(s)' (F2.6.4(b)); and
 - (ii) A Modification Group shall *evaluate* whether the Alternative Modification 'would, as compared with the Proposed Modification, better facilitate achievement of the Applicable BSC Objective(s) in relation to the issue or defect identified in the Modification Proposal' (F2.6.2).
- 7.2 The GSMG noted that the wording of (i) currently places an obligation on a Modification Group to develop an Alternative Modification which the Group believes may better facilitate the Applicable BSC Objectives than the Proposed Modification, even where the Group does not necessarily believe that the Alternative may be better than the existing Code baseline. Under (ii) the Group must then carry out an evaluation of whether the identified Alternative, when compared with the Proposed Modification, would in fact better address the defect identified in the Modification Proposal and better facilitate the Applicable BSC Objectives.
- 7.3 The Code is silent on the criteria for the Modification Group's final recommendation to the Panel. However, under the working practice developed by Modification Groups over the period since NETA Go-Live, Groups only recommend approval of an Alternative to the Panel where they believe that the Alternative would better achieve the Applicable BSC Objectives both in relation to the Proposed Modification and the current Code baseline.
- 7.4 The GSMG therefore considered whether the current Code requirements and Modification Group working practices are clear, and whether these deliver the intention of the Assessment Procedure.
- 7.5 Some members of the GSMG argued that the Code's obligation under (i) can currently result in nugatory work by Modification Groups on Alternatives which are not viewed by Groups as being

better than the then current version of the Code. These members argued that it would therefore be desirable to amend the Code's requirements for Modification Groups, so that their criteria for developing an Alternative was that the Group must believe it to better facilitate the Applicable BSC Objectives in comparison to both the Proposed Modification and the current Code baseline.

- 7.6 However, the majority of the GSMG argued that such a step would be a radical departure from the current BSC governance framework. These members considered that the intention of the Assessment Procedure is that a Modification Group develop the 'best version' of a Proposal as far as it is able, in order that this receive proper consideration by Parties, the Panel and the Authority.⁸ These members argued that this 'best version' should include any Alternative which the Modification Group believes may be better than the Proposed Modification. In its final recommendation to the Panel, the Group then considers whether the Alternative would also be better than the current Code baseline. However, this recommendation is subjective and is subject to consultation, the Panel's own recommendation, and the final decision of the Authority. The majority of the GSMG believed that allowing Modification Groups the ability to choose not to develop an Alternative which they believed could be better than the Proposed Modification would constrain debate and fetter the Authority's decision-making power. Moreover, these members considered that it was not possible to adequately assess the merits of a potential Alternative without the Alternative being fully developed and evaluated (including the commissioning of impact assessments and seeking industry views via consultation). These members argued that this is recognised in the Code's separate requirements for a Modification Group to develop under (i), and then evaluate under (ii), an Alternative Modification.
- 7.7 The majority of the GSMG therefore agreed that a Modification Proposal to oblige Modification Groups to develop Alternative Modifications where they believe the Alternative to be better than the Proposed Modification *and* the current Code baseline **would not** be desirable.

8. ISSUE 7: WITHDRAWAL OF MODIFICATION PROPOSALS

- 8.1 The GSMG noted that no process currently exists in the Code by which a Modification Proposal may be withdrawn after its first presentation to the Panel. The Group considered whether the requirement to progress each Modification Proposal through the full process involves unnecessary costs and inefficiencies where it becomes apparent during a Definition or Assessment Procedure that a Modification Proposal is not required.
- 8.2 The Group noted that P111 and P156 represented examples of past Modification Proposals where it had been identified after the Initial Written Assessment (IWA) stage that no Modification Proposal was required.⁹ In the case of P111, it was subsequently recognised by the Proposer and the Modification Group that the ability which the Proposal sought to introduce was already provided for by the Code – and therefore that the proposed defect did not exist. Similarly in the example of P156, the Proposal was later rendered redundant by the removal of the identified defect (P82) from the Code baseline.

⁸ Those members of the GSMG who were also involved in the governance of the CUSC noted that the CUSC Amendments Process allows for multiple Alternative Amendments to be developed by a Working Group or via industry consultation. These members argued that the purpose of the CUSC process is similarly to allow Alternatives which may be better than the Proposed Modification to receive due consideration by the Authority.

⁹ Modification Proposals P111 'Procedure to allow the BSC Panel to refuse to accept Contingent Modification Proposals' and P156 'Suspending the implementation of the zonal allocation of transmission losses'.

- 8.3 The GSMG noted that the CUSC contains a process for Amendment Proposals to be withdrawn by the Proposer at any time, and therefore agreed that in principle it would be supportive of a BSC process by which Modification Proposals could be withdrawn following the IWA stage. However, the Group considered that there were various obstacles to the introduction of such a process under the BSC, as outlined below.
- 8.4 The GSMG considered the example of the CUSC withdrawal process, which involves two industry consultations and may result in another Party agreeing to sponsor the Amendment Proposal. However, the Group agreed that the CUSC process would not deliver any efficiency gains if applied to the BSC, since it would not deliver any cost or time savings compared with the existing BSC process by which the Panel may halt a Definition or Assessment Procedure and proceed straight to the Report Phase.
- 8.5 The GSMG also noted that a Proposer is currently only able to withdraw a Modification Proposal before the presentation of its IWA to the Panel, since the Proposer's 'ownership' of the Proposal ceases after this point under the Code. The Group considered that this was a key difference between the BSC process and the CUSC, where the Proposer of an Amendment Proposal retains ownership of the Proposal throughout. The GSMG considered that the introduction of the CUSC concept of ownership within the Code would be a radical departure from current BSC governance, and agreed that this would not be appropriate. The Group also considered that there was a small potential risk that such a withdrawal ability could be used by a Proposer as an attempt to thwart Modification Group decisions with which the Proposer was not in agreement.
- 8.6 The GSMG therefore considered whether it would be desirable to amend the Code in order to allow a Modification Group to withdraw a Modification Proposal. The Group noted that the Code is currently silent regarding voting rules for Modification Groups, and discussed whether a decision to withdraw a Proposal should require unanimous or majority agreement amongst Modification Group members. One member of the GSMG stated their view that Modification Proposals should only be withdrawn with the agreement of the Proposer. Other members considered that this could be problematic since Proposers are not currently obliged to attend Modification Groups.
- 8.7 The majority of GSMG members agreed that the most appropriate withdrawal process would be for the Panel to be able to withdraw a Modification Proposal on the basis of a unanimous Modification Group recommendation. These members agreed that such a Panel decision should first be subject to an industry consultation, and that the Authority should have the right to veto the Panel's decision. However, the GSMG agreed that such a process would offer limited time-savings or efficiency gains when compared with the current process whereby the Panel may halt Definition or Assessment and proceed straight to Report.
- 8.8 Lastly, the GSMG discussed potential circumstances under which it might be desirable to allow withdrawal of Modification Proposals. Suggestions considered by the Group were that withdrawal should be allowed where it was agreed that the defect identified by the Proposal did not exist, or where it was not possible for a Modification Group to fully define a Proposal (as had occurred in the case of P132).¹⁰ However, the GSMG was unable to agree on a set of criteria to be applied, since it remained concerned that the suggested criteria still involved a degree of subjectivity.

¹⁰ Modification Proposal P132 'Redefinition of Credit Cover Requirements to account for Reconciliation Charges'.

- 8.9 On balance, the GSMG considered that the existing route by which the Panel decide at any time to proceed directly to the Report Phase had been demonstrated to work well. The majority of the Group therefore agreed that a Modification Proposal to allow Proposals to be withdrawn following IWA stage **would not** be desirable, due to the obstacles to introducing such a process and the limited efficiency gains which it would offer.

9. ISSUE 8: HOUSEKEEPING MODIFICATIONS

- 9.1 The GSMG noted that 'housekeeping' Modification Proposals (the correction of typographical errors, paragraph misnumbering and other minor inconsistencies within the Code) are currently required to be progressed through the full Modification Process. The Group noted that this process requires a 'housekeeping' Proposal to be presented to three separate Panel Meetings (recommendation to raise, IWA, draft Modification Report), and the production of 3 Panel papers, 1 consultation and 2 reports. The GSMG considered whether this requirement results in unnecessary costs and inefficiencies given the minor nature of the changes involved.
- 9.2 The GSMG considered that it would be desirable to reduce the length of the current process for 'housekeeping' Modifications, but agreed that any shortened process should continue to be fully transparent. The Group noted that there were a number of ways in which the length of the current 'housekeeping' process could potentially be reduced, including the following:

a) Allowing BSCCo to raise 'housekeeping' Modification Proposals directly.

The GSMG noted that this could deliver a one-month time saving by removing the need for BSCCo to present a Panel paper recommending that a Proposal be raised, so that the first stage in the 'housekeeping' process would therefore become the IWA. The Group noted that the Transmission Company is able to raise 'housekeeping' Amendment Proposals under the CUSC, but considered that this was different to the BSC model in that NGC is a CUSC Party and is also able to raise 'full' Amendment Proposals. The GSMG agreed that allowing BSCCo to raise Modification Proposals without obtaining the Panel's agreement would represent a significant change to BSC governance and would not be appropriate.

The GSMG therefore agreed that a Modification Proposal to allow BSCCo to raise 'housekeeping' Modifications in its own right **would not** be desirable.

b) Allowing BSCCo to present a recommendation to raise a 'housekeeping' Proposal and its IWA to the same Panel Meeting.

The GSMG agreed that this is not currently possible under the Code, which requires a Modification Proposal – once raised – to be 'placed on the agenda of the next Panel meeting' (F2.1.9). The Group therefore considered whether it would be desirable to amend the Code in order to enable a 'housekeeping' Proposal to be raised and its IWA considered by the Panel at the same meeting, since this would remove the current 'dead' month between these two stages. However, the Group agreed that there could be practical problems involved in drafting and publishing an IWA for a Proposal which had not yet been raised and allocated a number. The Group therefore considered that a more efficient and cost-effective solution might be to remove the requirement for an IWA altogether in the case of 'housekeeping' Modifications (see below).

On balance, the GSMG therefore agreed that a Modification Proposal to allow the Panel to raise a 'housekeeping' Modification Proposal and consider its IWA at the same meeting **would not** be desirable.

c) Allowing the Panel to raise 'housekeeping' Modification Proposals outside of regular Panel Meetings.

The GSMG noted that Section B of the Code currently requires Modification Business to be held in open session by the Panel (i.e. via a full meeting). An attendee at the meeting suggested that a Modification Proposal does not constitute 'Modification Business' until it has been raised and allocated a number. This attendee therefore suggested that the Panel could raise 'housekeeping' Modification Proposals by correspondence. However, the other members of the Group disagreed with this view and requested that BSCCo provide legal advice regarding this issue.

BSCCo's legal view is that a recommendation to raise a Modification Proposal could, strictly speaking, be regarded as 'pre-Modifications Business' – and as such could be dealt with by way of a regular or ad-hoc Panel Meeting, or by a Panel resolution. With the exception of Urgent Panel Meetings (which may be held by teleconference) Section B requires any additional Panel Meetings to be notified in advance to Parties – and non-Modifications Business may only be held in closed session where the matters to be discussed are commercially sensitive. However, B4.4.6 states that 'a resolution signed by or on behalf of all Panel Members entitled to vote shall be valid and effectual as if passed at a duly convened and quorate meeting of the Panel'. Such a resolution would have to be prepared in writing by BSCCo and signed by Panel Members, and therefore could not be conducted by telephone or an informal e-mail exchange.

BSCCo's legal advice is therefore that a recommendation to raise a Modification Proposal could be dealt with by the Panel via a resolution rather than a full session meeting. However, the GSMG noted BSCCo's legal concerns that this route might reduce the transparency of the current process without offering significant efficiency gains – since, although it might achieve a slight reduction in timescale, the same volume of paperwork would be required.

The GSMG noted that adoption of such a process lay outside its immediate area of consideration (potential changes to the Code) since it would involve a change to BSCCo/Panel working practices and therefore that **no Modification Proposal was required**. One member stated that they would be broadly supportive of this ability being used if there were cost and/or time savings to be gained. However, this member stated that it was not immediately obvious to them that any significant savings would result from such a process. Other members of the Group considered that it would be inappropriate for the Panel to agree to raise Modifications outside of regular Panel meetings since this would reduce the transparency of the Modifications Process without delivering any significant cost or time savings. One member suggested that it might actually be more inefficient for Panel Members to deal with such matters outside of normal meetings.

On balance, the GSMG agreed that its preferred method for delivering a time and cost savings in the 'housekeeping' Modification process would be to remove the Code's requirement for an IWA in respect of such Modification Proposals (see below).

d) Removing the requirement for an IWA in relation to 'housekeeping' Modification Proposals

The GSMG agreed that the most efficient and cost-effective option for reducing the length of the current process would be to remove the Code's requirement for an IWA in respect of 'housekeeping' Modification Proposals. The Group agreed that the purpose of an IWA is to highlight potential issues arising from Modification Proposals, and to allow the Panel to determine how each Proposal should be progressed. The GSMG considered that the IWA therefore represents an unnecessary requirement for 'housekeeping' Modifications, as the changes proposed by such Proposals are by necessity minor and inconsequential and are progressed straight to the Report Phase as 'self-evident'. The Group noted that the Panel would have already reviewed the Proposal (including the draft legal text) when agreeing that it should be raised, and considered that there was therefore no reason why the Proposal could not proceed directly to Report Phase consultation following the meeting at which the Proposal was raised. The GSMG agreed that this would avoid the current 'dead' month between the raising of a 'housekeeping' Proposal and consideration of its IWA, and would also avoid the costs of producing and presenting the IWA report.

The GSMG therefore agreed that a Modification Proposal to remove the requirement for an IWA relating to a 'housekeeping' Modifications **would** be desirable, in order to allow such Proposals to be sent directly to the Report Phase at the Panel Meeting at which they were raised. One member stated their view that, if such a reduced process was implemented, the draft Modification Report for a 'housekeeping' Proposal should include the impact assessment that would previously have been provided in the IWA.

- 9.3 Although supportive of such a Proposal, one member expressed their concern at the number of 'housekeeping' errors which are identified by BSCCo. This member reiterated the importance of a stringent review process being applied to legal text by BSCCo, Modification Groups and the Panel, to ensure that such text is correct prior to its submission to the Authority.

10. OTHER ISSUES

- 10.1 The Proposer of Standing Issue 9 was invited to raise any additional Section F issues which they believed should be considered by GSMG. However, the Proposer's Representative clarified that the aim of Standing Issue 9 had been to create a vehicle for general Group debate, and that there were no specific issues which they wished to pursue.
- 10.2 The other members of the GSMG were also invited to raise additional issues for consideration. Two such issues were discussed as follows:

ISSUE 9: ABILITY TO RAISE A MODIFICATION PROPOSAL TO ENSURE CODE COMPLIANCE WITH PRIMARY LEGISLATION

The GSMG noted BSCCo's advice that the Code currently provides for the Panel to raise a Modification Proposal relating to the introduction of the Euro (H9.8), but not to ensure the Code's compliance with other primary legislation. However, the Group considered that such Proposals could be raised by the Panel on efficiency grounds against Applicable BSC Objective (d), as in the case of P170.¹¹ Alternatively, one member suggested that it would be the duty of the

¹¹ Modification Proposal P170 'Amendments to the Balancing and Settlement Code (Code), and to the systems and processes that support it, to allow compliance with the changed application of VAT to Trading Charges'. P170 seeks to amend the Code to

Transmission Company to raise a Modification Proposal in the event of a potential non-compliance by the Code.

The GSMG therefore agreed that such circumstances were adequately catered for by the existing provisions of the Code, and that **no Modification Proposal was required**.

ISSUE 10: ABILITY FOR PANEL TO REQUEST A CHANGE TO AN APPROVED IMPLEMENTATION DATE ON COST-EFFICIENCY GROUNDS

An attendee at the GSMG meeting requested that BSCCo provide advice as to whether the Panel's existing ability to request a change to an Approved Modification's Implementation Date under Section F could be used on grounds of cost-efficiency.

Specifically, the attendee queried whether the Panel could request that an Implementation Date be moved where it became apparent that a particular Modification would be the only BSC Systems change in a Release – and where it would therefore incur full 'stand-alone' rather than 'incremental' implementation costs. The attendee clarified that their query arose in the context of P140, which is currently the only BSC Systems change scheduled for the February 05 Release.

BSCCo undertook to provide legal advice on this issue, and this was subsequently circulated to the Group. BSCCo's legal view is that, under the current provisions of the Code, the Panel may only apply to the Authority to alter an Implementation Date for an Approved Modification where (on the basis of a report by BSCCo) it has identified a potential delay to its implementation timetable in accordance with Sections F2.11.5 and F2.11.8. The Panel therefore has no ability to request a change to an Implementation Date due to a change in the expected content of a Release. However, F2.11.7 allows the Authority to independently direct that an Implementation Date be brought forward or extended. The Authority may therefore be able to exercise this ability on grounds of cost-efficiency, depending on the nature of its own obligations relating to Implementation Dates.

Having considered the legal advice provided by BSCCo, the GSMG discussed by correspondence whether the introduction of a process for the Panel to request a change to an Implementation Date on cost-efficiency grounds would be desirable.

One member of the Group agreed that it may be beneficial to change Implementation Dates due to cost control. However, they remained unconvinced that a process for the Panel to request such a change was required since they noted that the Authority already has the ability to independently direct a change to an Implementation Date. Some members also considered that the addition of such a Panel process might introduce an extra degree of regulatory uncertainty. In contrast, another member suggested that a process for the Panel to request a change to an Implementation Date on cost grounds might be a useful step in flagging the issue to the Authority. One member stated their view that the implementation approach adopted for Modifications should be the most cost-effective solution, and that it therefore did not appear to be desirable to implement a non-urgent Modification as the sole BSC Systems change in a Release.

One member of the GSMG considered that it was difficult to imagine the circumstances under which an Implementation Date might be changed purely on the grounds of a change in cost, since the 'worst case' stand-alone implementation costs for each Modification Proposal would have been provided to the Panel and the Authority in the Modification Report – and would therefore not represent 'new information'. However, this member agreed that it might be

ensure its compliance with a change in EU tax legislation.

prudent to introduce such a facility into the Code via a Modification Proposal, providing that the Proposal include the obligation for the Panel to undertake full and proper consultation before making such a request.

On balance, the GSMG therefore agreed that a Modification Proposal to introduce the ability for the Panel to request a change to an Implementation Date on cost-efficiency grounds **might** be desirable.

However, the Group noted that the issue had been raised towards the end of the Standing Issue 9 meeting, and that due to the need to obtain legal advice it had not been subject to full discussion at that time. The GSMG also noted that Issue 10 had since been raised in order to further examine various issues relating to Implementation Dates, and the Group therefore agreed that the desirability of changes to Implementation Dates on cost-efficiency grounds should be discussed in more detail as part of the Issue 10 meetings.

11. SUMMARY OF GSMG CONCLUSIONS

11.1 In summary, the conclusions of the GSMG in relation to Standing Issue 9 are that a Modification Proposal would be desirable in the following area:

- Process for 'housekeeping' Modification Proposals – removal of the requirement for an IWA in relation to a 'housekeeping' Modification Proposal, in order to allow the Proposal to be sent directly to the Report Phase at the Panel Meeting at which it was raised.

11.2 The GSMG also agreed that a Modification Proposal to allow the Panel to request a change to an Implementation Date on grounds of cost-efficiency might be desirable, but agreed that this issue should be discussed further as part of the Group's wider consideration of Implementation Dates under Issue 10.

11.3 The GSMG agreed that if Parties wished to raise Modification Proposals in respect of any of the issues identified by this paper, the individual issues would be best progressed as separate Modification Proposals. The Group noted that this would avoid the risk that disagreement with one element of a combined Proposal could lead to rejection of the whole package of issues.

Kathryn Coffin ELEXON Change Delivery

References

- Reference 1 – BSC Panel Paper 75/014 'BSC Modifications Procedures: Issues Register'
Reference 2 – BSC Panel Paper 75/014, Appendix 2 'Modification Process Issues'
Reference 3 – Extract of Panel Meeting 75: Minutes of meeting held on 8 April 2004
Reference 4 – Standing Issue 9 'Review of Aspects of the Modifications Process'

These documents are available in the GSMG section of the BSC Website:

[ELEXON - Review of Aspects of the Modification Process](#)

ANNEX 1 GSMG MEMBERSHIP: ISSUE 9

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