

Consolidation Group Minutes

14 December 2005 10.00am

Ofgem, 9 Millbank, London

Persons present

Mike Harding(MH), Craig Neil(CN), David Tolley(DT), Kevin Woollard(KW), Steve Mackay(SM), David Edward(DE), Doug Houlbrook(DH), John Hill(JH), Peter Waymont(PW), Dipen Gadhia(DG), Jill Ashby(JA), Roger Barnard(RB), Keith Munday(KM), Jim Cardwell(JC), John Lucas(JL), Mark Field(MF)

Opening Remarks

MH opened the meeting and set out the structure of the day's discussions.

Co-operation between DNOs and suppliers during the development of any DCUSA.

There was some discussion over why the Ofgem distribution licence drafting included in the conclusions document did not contain an obligation on DNOs to consult with suppliers during the development of any DCUSA.

There appeared to be a general acceptance that such a clause would be appropriate.

MH asked the members of the group representing network operators whether such a clause would be acceptable. There was general agreement from the DNOs that this would be desirable.

Short Form Code

Some members of the group indicated that they struggled to see how the short form code option was appropriate to use in the DCUSA arrangements. RB considered that such a method may not be legally robust.

DE acknowledged all the comments received on this, which now being considered.

The presence in the supply licence of an obligation on suppliers to accede to and comply with the DCUSA.

The network operator representatives were united in their concern that without a licence obligation ensuring both the accession of suppliers to the DCUSA arrangements there was a risk that a significant amount of work and money might be wasted if it proved impossible to force suppliers to participate in the new arrangements.

MH asked the supplier representatives at the meeting what position they would like to adopt. The majority of suppliers responded that they would be happy to accept a licence requirement to accede and comply with the DCUSA.

DT noted that for RWE there was a difference between acceding and complying. He noted that it would be preferable to await the outcome of the current Ofgem work in relation to the supply licence review to require accession, but to keep the provisions which dealt with compliance within the DCUSA.

MF indicated that it is vital that Suppliers were involved in the development of the Agreement. MH asked the group if anyone had any concerns about engaging Suppliers? They group indicated that they did not.

RB indicated that four requirements were essential for the project going forward. They were, 1. A method to bring a clean end to the current arrangements, 2) Removal of the obligation on DNO's to offer terms. 3) A Supply Licence obligation and 4) The agreement to be developed in consultation with Suppliers.

DT indicated that the phrase 'consultation with Suppliers' may need to be refined, to which RB responded that then obligations to pay for development of the agreement may need to be refined.

Timing of the development process, development and scope

There was unease amongst the group about the proposed development window set out by Ofgem in its draft distribution licence amendment (6 months).

RB indicated that the drafting may be quite complex and the timeframes indicated may not be adequate. CN considered that the due date should be planned after a project plan had been agreed.

RB indicated that even after a CLM is successful, a CLM is not in force until it is actually brought in to legal force, which need not happen immediately after close of CLM voting period.

A number of network operator representatives expressed concern over how well the CLM drafting prevents against the risk that the scope of the DCUSA could be widened in the future.

DE noted that the scope of the DCUSA is bound by the natural safeguard of the Applicable DCUSA Objectives. He noted that whilst there would undoubtedly be amendment proposals where it was difficult to decide whether the proposal was within the scope of the arrangements, this would be a matter for the Panel to decide and would therefore be a matter over which industry had a high level of autonomy.

KM indicated that the dual hurdle approach could prove to be a method that allows change to be easily frustrated..

Payment terms and Credit Cover

The group agreed that the current drafting of 6.11/12 was acceptable for the purposes of providing a consolidated DUoSA but highlighted that this was still a live issue that need further evaluation.

A further issue identified was "what should comprise a Unit Charge" and the applicability of schedule 4. The group agreed a thorough review of schedule 4 was required.

DT noted that the current drafting of the DUoSA developed by RB subsequent to the last meeting of the group reflected the reality of the payments arena rather than an elegant solution to the issue.

JC noted that his understanding of the solution being developed was that the mechanism introduces the concept of two 'pots' of charges and that a DNO can choose to allot transactional charges to either pot one or pot two.

DT noted that whilst this was the case to a limited extent the basic principle should be that Use of System changes (i.e. those occurring as a result of a licence obligation) should fall under pot one and thus require credit cover and the transactional charges should fall into pot two (ie those not being charged as a result of a service provided by a DNO as a result of a licence obligation) and should only be covered by credit cover where this was agreed between the parties.

There was extensive debate on this issue and it became clear that different DNOs have different interpretations as to which charges it would be appropriate to include in pot one.

It appeared to the group that there were two questions to answer

1. What is a transactional charge – it was suggested that these were charges which arose as the result of the provision of services other than those which DNOs must provide under a licence requirement.
2. If none licence backed charges were to be excluded from being placed in pot one DNOs wanted an assurance from Ofgem that, in the event of a supplier failure the pass through provisions would apply to both amounts arising as a result of UoS charges **and** those arising as a result of transactional charges and not to UoS only.

DE noted that Ofgem consider that only charges which arise on the basis of services provided by the DNO under a licence obligation should fall under pot one. He noted that, in the even of supplier failure, Ofgem would determine whether to allow pass-through for UoS charges on the basis of how effectively the relevant DNO had implemented the policy guidelines set out by Ofgem in its conclusions document relating to best practice for network operator credit cover. He went on to explain that in relation to monies arising as a result of transactional charges, pass through would be decided according to a best commercial practice comparison basis.

MH put the question of whether the exclusion of transactional charges (as described above) from being allotted to pot one should be removed. The group voted that in light of the discussions of that day it would be appropriate to remove this exclusion.

The group went onto accept the majority of the discussed changes on schedule 1 bar the following;

Payment Record – The group could still not come to an agreement on what 'payments' should be acceptable to constitute a good payment record for the purposes of working out a credit allowance.

Default of Credit Cover – The conclusions document states that if a counterparty's VAR breaches its Credit Allowance and lodged collateral it must provide within 2 days additional collateral to bring its VAR down to 80% and maintain it at that level for a year. All group members were willing to accept a divergence from this where counterparties would be required to bring VAR down to below 100% within the 2 days and so long as they maintained it below 100% they would not have to maintain VAR at 80%. However the group could not agree if they accepted this change how it may affect any claims for pass through.