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29 June 2009

Dear Mark

The “timing out” of Code modification proposals – second consultation

Thank you for the opportunity to comment on Ofgem’s revised proposals to prevent Authority decisions on code modifications being ‘timed out’.

The CUSC Panel has considered the Ofgem response to the original consultation and the new Option C solution. The Panel believes the observations made in its response to the first consultation remain valid. In particular it remains of the view that there is no need for licence changes to address timing out, especially as CUSC Amendment Proposals do not normally use decision by dates in their implementation approach.¹

There are no provisions within the CUSC and relevant licence conditions which preclude the Authority from requesting revised decision by dates from the Panel. The Panel questions whether making a licence change is the most efficient process for achieving resolution to the problem (identified in the consultation document) of ‘timing out’. It would seem more appropriate to seek to make a revision to the CUSC Amendment Procedures through the normal change route. Ofgem could invite industry to raise an Amendment Proposal to the current processes to clearly describe that the Authority can request revised decide by dates.

Comments on the Option C solution

The Panel recommends that, should the Authority have the right to request revised decide by dates, this power should only be permitted once for a particular Amendment Proposal. It is anticipated that the need to request revised decide by dates would only be needed in extreme cases, therefore a single request should be sufficient. This would better meet the principles of good governance² and ensure the incentive remains to provide a timely decision on changes.

In the event that the Authority requested only new dates, without a request for updated analysis, it is unclear whether the CUSC Panel would be:

- permitted to suggest the updating of analysis to the Authority; and

¹ In a few cases there has been a decision by date linked with IS development or a time specific event (with a contingency included to avoid timing out). The only exception to this is the recent Transmission Access proposals with implementation dates for April 2010 – the drivers for which are understood by Ofgem..

² For example as outlined by the Authority in its (BSC) P93 Decision Letter of 21st November 2002.

- able to provide a revised recommendation on the Amendment Proposal arising from any revised analysis.

The Panel believes that it must be permitted the opportunity to provide a revised recommendation (or state its continued support) as to whether the Amendment Proposal in question still better meets the Applicable CUSC Objectives where the Authority has requested a revised decide by date (from that stated in the original Amendment Report), particularly where analysis is updated. In undertaking a revised recommendation vote it was acknowledged that the Panel would be likely to consult CUSC Parties and, potentially, establish a group to undertake the work of updating the analysis, if required. It remains unclear as to whether the Panel would have the right to comment on whether revised analysis is required, however, such matters could be resolved in a consequential Amendment Proposal to deliver the licence changes (or as part of a normal CUSC Amendment process without the draft licence changes).

In the event that the Panel is required to provide revised decide by dates and analysis, the Authority should provide sufficient time to allow the Panel to complete their work and consult CUSC Parties in advance of the last 'decision by date' currently with the Authority.

Finally we note that the draft legal text has a typo in both the BSC and CUSC wording, the net effect of which appears to render null and void the proposed Option C change. The draft new definition of "Implementation Related Dates" refers to 4 (b)(iv) (for the BSC) and 6 (b)(iv) (for the CUSC). In both cases rather than "(iv)" it should be "(vi)".

If you would like to discuss this response further please contact Carole Hook on 01926 654211.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Alison Kay', is written above the printed name.

Alison Kay