

CODE MODIFICATION PROPOSAL No. 0040
"Variation of Proposals in light of a Competition Commission direction"
Version 1.0

Date: 08/09/2005

Proposed Implementation Date:

Urgency: Non-Urgent

Proposer's preferred route through modification procedures and if applicable, justification for Urgency

(see the criteria at http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/2752_Urgency_Criteria.pdf)

This Proposal was developed by the Governance Workstream and included in Review Report 0020. It is suggested that this Proposal would benefit from further development within the Governance Workstream. This would enable full consideration to be given to the nature of the processes which will surround the anticipated appeals process, taking account both of the relevant statutes and also any guidance published by the Competition Commission, DTI and/or Ofgem.

Nature and Purpose of Proposal (including consequence of non implementation)

The proposal is that any Modification Proposal may, provided the Proposer agrees, be varied in light of a Competition Commission direction.

The appeals process which has been introduced by DTI allows parties to appeal against Ofgem decisions. When the Competition Commission hears an appeal, its decision is expected to be in the form of a direction. There may be circumstances where that direction requires implementation in a manner which to some extent differs from the appealed Modification Proposal. For example, a Modification Proposal might envisage initiating an annual process to be completed by 1 October each year. Following an appeal, a Competition Commission direction may be received to implement the Modification Proposal but, in light of the passage of time, saying that the process should be completed by 1 December in the initial year.

The Modification Rules permit all Modification Proposals to be varied prior to the Consultation Phase. Variation in light of a Competition Commission direction is not envisaged by the Modification Rules. In principle, therefore, it may not be possible for a Competition Commission direction to be implemented without a new Modification Proposal being raised. However, this Proposal would also be subject to the Modification Rules and any decision regarding implementation may itself be appealed.

To enable efficient compliance with Competition Commission directions, it is therefore proposed that all Modification Proposals may, with the Proposer's consent, be varied to reflect any Competition Commission direction.

Basis upon which the Proposer considers that it will better facilitate the achievement of the Relevant Objectives, specified in Standard Special Condition A11.1 & 2 of the Gas Transporters Licence

Implementation of this Modification Proposal would better facilitate the achievement of the Relevant Objective specified in Standard Special Condition A11.2 through development of the

mechanism by which any of the uniform network code and each of the network codes prepared by each relevant gas transporter may be modified.

Implementation of this Modification Proposal would also better facilitate the achievement of the Relevant Objective specified in Standard Special Condition A11.1 (f), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code.

Any further information (Optional), likely impact on systems, processes or procedures, Proposer's view on implementation timescales and suggested text

No operational impacts are anticipated.

Implementation can follow immediately on direction from the Authority.

Code Concerned, sections and paragraphs

Modification Rules, 6.5.

Proposer's Representative

Richard Hewitt (National Grid Transco - UKT)

Proposer

Richard Court (National Grid Transco - UKT)

Signature

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