

Representation

Draft Modification Report

0312 - Introduction of Two-Thirds Majority Voting to the UNC Modification Panel

Consultation close out date: 19 May 2011
Respond to: enquiries@gasgovernance.co.uk
Organisation: National Grid Distribution
Representative: Alison Chamberlain
Date of Representation: 19 May 2011

Do you support or oppose implementation?

Comments *delete as appropriate*

Please summarise (in one paragraph) the key reason(s) for your support/opposition.

NGD has some sympathy with the Proposer, the aims of the proposal and the arguments put forward in its favour, but also maintains the view that this approach may not necessarily achieve the desired objective in all eventualities. The aim of the Proposal is to create a higher hurdle for a Modification Proposal emanating from a Significant Code Review (SCR). For such a proposal a right to appeal would exist if the proposal were implemented but did not receive a two thirds majority vote of the UNC Panel. In any event we remain uncertain as to whether it would have a significant impact on the right to appeal. We believe that ultimately the right of appeal would rest with the Competition Commission and whether for example it would choose to reject an appeal which stemmed from a "simple" majority. In other words the Competition Commission may choose to interpret "majority" to mean a two thirds majority but the implementation of this Proposal in our view would have limited impact on this decision.

The Competition Commission in determining the legitimacy of any appeal may however take the view that a new category of proposal (SCR) has been introduced since the implementation of the Statutory Instrument (SI) in 2005 and that the parties to Code wish this new category of Modification Proposal to be subject to a specific type of majority. It is unlikely that this would be viewed as circumventing the SI.

Are there any new or additional issues that you believe should be recorded in the Modification Report?

No.

Relevant Objectives:

How would implementation of this modification impact the relevant objectives?

0312
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19 May 2011

Version 1.0

Page 1 of 2

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NGD agrees with the Workstream Report in so much as the Proposal, if implemented, would not be expected to better facilitate SSC A11.1 (a), (b), (c) & (e).

In relation to SSC A11.1 (d): "promotion of competition"; NGD agrees that the Proposal has the intention of making it harder for Ofgem to avoid the right of appeal in relation to Modifications which have originated with them. This may be viewed as "fair" and consequently make the market more attractive to competition. We remain to be convinced however that it will have any significant effect.

In relation to SSC A11.1 (f) "promotion of efficiency": on balance it is difficult to see that this Proposal will have any significant impact on this objective. It can be argued that the Proposal, if implemented, will increase the complexity of the governance arrangements and consequently have a negative impact on this relevant objective.

Impacts and Costs:

What analysis, development and ongoing costs would you face if this modification were implemented?

No additional costs would be anticipated as a result of implementation of this Modification Proposal.

Implementation:

What lead-time would you wish to see prior to this modification being implemented, and why?

It is assumed implementation could be effective immediately upon receipt of the Ofgem decision.

Legal Text:

Are you satisfied that the legal text will deliver the intent of the modification?

NGD believes that the legal text is consistent with the Modification Proposal.

Is there anything further you wish to be taken into account?

Please provide any additional comments, supporting analysis, or other information that that you believe should be taken into account or you wish to emphasise.

No.