
Meeting name	BSC Panel
Date of meeting	13 March 2003
Paper Title	INTERIM REPORT: MODIFICATION PROPOSAL P115 'DISAPPLICATION OF SUPPLIER CHARGES UNDER CERTAIN CIRCUMSTANCES'
Purpose of Paper	For Information
Synopsis	The Panel is invited to note this Interim Report made in respect of Modification Proposal P115 detailing the progress made to date by the Modification Group and the actions being taken/planned to complete the Assessment Procedure.

1. INTRODUCTION

- 1.1 Modification Proposal P115 'Disapplication of Supplier Charges Under Certain Circumstances' (P115) was submitted on 24 December 2002 by Innogy plc.
- 1.2 P115 proposes to allow the Panel to disapply part, or all, of the Menu of Supplier Charges for those periods where the application of such charges may be inconsistent with the status of the charges as "liquidated damages", or it may be otherwise unreasonable to apply them.
- 1.3 The Proposer suggests that such circumstances would include where:
 - a) there is a known defect in the mechanism for calculating the charges and/or their re-distribution;
 - b) the Performance Levels and Serials in respect of which the charges are applied do not take account of a recognised defect in industry process or arrangements;
 - c) performance has been significantly impacted by a failure of a previous Supplier(s) to comply with obligations under the Code.
- 1.4 The Proposer believes that in such circumstances, payments due to "generic problems", combined with a Supplier's Monthly Cap, could dilute the resulting incentive on Suppliers to improve their own performance.
- 1.5 The Proposer believes that the removal of "generic problems" will raise performance to a level where the effect of caps is avoided, and that this would be a positive incentive for Suppliers to investigate the cause of problems due to their own failures.
- 1.6 The Initial Written Assessment for P115 was presented to the Panel meeting on 16 January 2003. The Panel determined that P115 should undergo a 3 month assessment by the VASMG and the Assessment Report is therefore schedule to be presented to the Panel at their meeting on 10 April 2003.
- 1.7 The Panel also requested that an interim report should be submitted when the baseline of the Proposed Modification had been defined. The Modification Group should investigate the materiality of the problem and the associated costs and the incentives on the provision of accurate data.

2. INITIAL ANALYSIS OF THE VASMG

- 2.1 The VASMG has held two meetings and also initiated a consultation on the principles of the Modification Proposal.
- 2.2 At this stage in the Assessment Procedure the VASMG:
- a) support the principle that it may be appropriate to disapply Supplier Charges under certain circumstances;
 - b) agree a number of market problems have been identified that could be considered to be generic, addressing these may well reduce the liability of Suppliers to pay charges;
 - c) have not identified a mechanism to quantify the impact of these problems and hence have yet to identify a mechanism to allow charges to be disappplied;
 - d) recognise that any solution is likely to be complicated and hence possibly costly to develop;
 - e) note that other initiatives, such as Change of Supplier/Change of Agent (CoS/CoA), are being considered and that these may address some of the generic problems;
 - f) agree that the materiality has been initially assessed as low and is complex to calculate exactly. The VASMG noted that whilst low materiality could support an argument for not further progressing P115, they also recognised that the justification for the Modification Proposal was to improve the compensation and incentives delivered by Supplier Charges.
- 2.3 The majority of the VASMG are sympathetic to the principle, yet recognise that it may not be possible to define a viable solution within the constraints imposed by the Modification Procedures.
- 2.4 As a result, the VASMG believed it was appropriate to consult Parties on their views regarding P115. A consultation document was produced, including details of what the Modification Proposal is trying to achieve, analysis into the materiality, possible generic market problems and the views of the VASMG. The consultation seeks to determine the level of support for the principle of disapplying charges and also some of the details of how this maybe achieved. The consultation was initiated on 5 March 2003 and will be completed on 14 March 2003.
- 2.5 In addition the VASMG have produced a list of market problems that could be considered to be generic (see 2.2.b above). The VASMG recognised that whilst these may be addressed by the CoS/CoA initiative, this was unlikely to yield results for a significant period of time. Having carried out the analysis to identify these problems it was felt that consideration should be given to addressing them in the short term. A paper (SVG/25/351) was submitted to the Supplier Volume Allocation Group (SVG), who agreed that a SVG Workshop should be held to discuss the issues, identify which should be taken forward and propose how this should be done.

3. NEXT STEPS IN THE ASSESSMENT OF MODIFICATION PROPOSAL P115

- 3.1 The consultation will finish on 14 March 2003 and the VASMG will meet shortly afterwards to consider the responses.

- 3.2 There are two aspects to consider from the consultation responses:
- a) is there support for the principle of the disapplication of Supplier Charges, do respondents believe it is material, and if a viable solution can be identified would it be capable of better facilitating the Applicable BSC Objectives;
 - b) based on this information can the VASMG identify a viable solution that provides a robust, transparent and cost effective approach to: identify eligible problems; quantify their impact; and then link them to a mechanism to disapply selected charges.
- 3.3 The VASMG's assessment of these two aspects of the responses will determine how the VASMG will progress the Assessment Procedure.
- 3.4 Based on their current understanding the VASMG are not confident that they will be able to identify a viable mechanism for how charges could be disapplied. They will continue to consider this aspect during the consultation period, and have also asked respondents for views on the types of solution they may support, and also to forward suggested solutions.
- 3.5 Furthermore the VASMG recognise that in constructing a solution it must not place obligations on the Performance Assurance Board (PAB) which they are unable to fulfil. Hence the VASMG recognise they may not be able to identify even a simple solution that can be expressed in robust legal text. Should no viable solution be identified then the VASMG would need to complete their Assessment Procedure without legal text for the Proposed Modification.
- 3.6 Without pre-judging the outcome of the exercise to investigate solutions, the VASMG believe that should no solution be identified, then they may be able to complete their Assessment Procedure against the current timetable, and present a completed Assessment Report to the Panel for consideration at their meeting on 10 April 2003.
- 3.7 However, if a feasible mechanism is identified, which is considered cost effective in relation to the materiality, then the VASMG will need to progress the Modification Proposal further. This will require a further Interim Report to the next Panel meeting requesting an extension to the existing timetable to allow the solution to be fully developed, impact assessments produced, legal text commissioned, and potentially a further consultation as to whether the proposed solution would better facilitate the achievement of the Applicable BSC Objectives.

4. RECOMMENDATIONS

4.1 The Panel is invited to:

- a) NOTE the results of this Interim Report;**
- b) NOTE that potential "generic problems" have been identified and these are now being progressed by SVG; and**
- c) NOTE the actions being taken by the VASMG and the potential outcome, particularly in terms of the fact that the Assessment Procedure may not identify a viable solution, or if it does, an extended Assessment Procedure will be required.**

Chris Rowell
Modification Secretary