

Trading Disputes Process

Meeting Name	BSC Panel
Meeting Date	13 February 2014
Purpose of paper	Decision
Summary	This paper provides detail on an identified discrepancy between BSC and BSCP processes for authorising run dates for Post-Final Settlement Runs and Extra-Settlement Determinations.

1. Background

- 1.1 When processing an Extra-Settlement Determination (ESD) for a Trading Dispute upheld by the Trading Disputes Committee (TDC) at its January 2014 meeting (TDC186), ELEXON noted a minor discrepancy between the processes detailed in the Balancing and Settlement Code (BSC) and Balancing and Settlement Code Procedures (BSCP). This paper provides information on the discrepancy and details ELEXON's proposed course of action.
- 1.2 The BSC is a legal document which sets out the rules for the operation and governance of the Balancing Mechanism and Imbalance Settlement. BSCPs are a subset of the BSC which detail the procedures that must be followed to ensure compliance under the BSC. Whilst the processes detailed in the BSC and relevant BSCPs should align, wherever a discrepancy is identified between the documents, the provisions of the BSC shall prevail.

2. Trading Disputes Process

- 2.1 Following the determination that a Trading Dispute is valid against the three criteria detailed in BSCP11, the TDC shall uphold the dispute and determine a means of rectification. If the dispute is capable of rectification before the Final Settlement Run (RF) through the normal Settlement process, the TDC shall adopt this rectification method. However, if rectification is not possible before RF, the TDC can determine to rectify through either a Post-Final Settlement Run (PFSR) or ESD. Both PFSRs and ESDs sit outside the normal Settlement process, and require TDC authorisation to perform.
- 2.2 As per the process detailed in BSCP11¹, within 5 Working Days (WDs) of determining a rectification method, ELEXON will advise the Raising Party of the decision and any corrective actions that are

¹ Paragraph 5.1.16

required. The Raising Party shall then instruct its relevant Party Agent(s) to perform any corrective actions pursuant to the TDCs determination.

- 2.3 The processes detailed in BSCP11 (relating to performing PFSRs and ESDs) do not require the dispute to be taken to the Panel for approval of a 'run date'. However, BSC Section W Paragraph 4.2.2 states that:

"Following a determination of the Trading Disputes Committee pursuant to paragraph 4.1.1, that a Post-Final Settlement Run or Extra-Settlement Determination should be undertaken the Panel shall after consultation with the relevant BSC Agents specify the date when such Run or determination is to be undertaken."

- 2.4 This puts a clear obligation on gaining Panel approval for the dates at which any PFSR or ESD is performed as a result of a determination by the TDC. Therefore the BSC Section W processes are such that the TDC makes the determination to undertake a PFSR or ESD and the Panel is required to approve the 'run date'.
- 2.5 As Panel approval for the correction dates of either rectification methods has not been sought in recent memory, ELEXON has looked into the history of the Trading Disputes process to identify when the current working practice was introduced.

3. Modification P256

- 3.1 Following ELEXON's investigations it has been identified that internal processes changed around the implementation of [Modification P256](#) (Improving efficiency and clarity of the Trading Disputes process) in November 2010.
- 3.2 Prior to Modification P256, rectification through a PFSR or ESD (i.e. the process of agreeing that a run should be used and the date upon which the run is undertaken) could only be determined by the Panel. Therefore, if the TDC believed that one of these rectification methods should be utilised, it would make this recommendation to the Panel for determination.
- 3.3 In May 2010, whilst P256 was in progress, the Panel agreed a temporary measure which allowed for the authorisations for PFSR and ESDs to be sought through the ELEXON report:

ELEXON noted that as a temporary measure, prior to any approval of the Modification Proposal delegating these approvals to the TDC, straightforward authorisations from the Panel would be sought in future through the ELEXON report.²

² Para 15.1 of the May 2010 Panel minutes.

It should be noted that approvals through the ELEXON report were no longer requested after Modification P256 was implemented.

- 3.4 Modification P256 was raised following concerns that the Trading Disputes process was inefficient and the appeals process was unclear. As corrections to Settlement data are permitted up to the RF, the majority of Trading Disputes are to correct data beyond RF by either a PFSR or ESD. This meant that in practice nearly all Trading Disputes required a Panel determination. The inability of the TDC to determine a rectification method and date added at least a month to an already lengthy process, and as these decisions were made solely by the Panel, they fell outside the arbitration criteria detailed in Section W of the BSC. This denied Parties the opportunity to appeal the majority of Trading Dispute determinations under the BSC.
- 3.5 The Modification Group agreed that it would be more efficient for the TDC to have the authority to make determinations on all rectification methods. This was designed to streamline the process by removing the requirement to take rectification methods to the Panel for approval. This also allowed all dispute determinations to be referred to the Panel or arbitration if a Party disagreed with the outcome.
- 3.6 As a result of the Modification Group's recommendations, changes to the legal text of the relevant sections of the BSC/BSCP were drafted. The changes to BSCP11 removed all reference of taking PFSRs and ESDs to the Panel for any determination. The redlined changes to BSCP11 can be viewed in Attachment A. Changes were also made to the legal text within BSC Section U, Section W and Annex X-1 to reflect the new process. However, despite the requirement in Section W Paragraph 4.2.2 being amended, the obligation to gain Panel approval for the last step (of agreeing a run date for runs authorised by TDC) was retained. The amendments to this obligation can be found in Attachment B. This clearly does not fall in-line with the spirit of P256 (to increase the efficiency of the Trading Dispute process), as all PFSRs and ESDs still require Panel approval of a run date before implementation. ELEXON feels that this may have been an oversight when drafting the legal text in 2010 as ELEXON cannot understand why the Panel would retain this single, mainly procedural, step in the process.

4. Proposed Course of Action

- 4.1 It is apparent that the intention of Modification P256 was to remove the requirement for the Panel to make determinations on Trading Disputes (useless specifically referred to them). This is evident in the BSCP and ELEXON's local working instructions which were updated following the implementation of P256.
- 4.2 ELEXON proposes that the Panel should delegate the authority of approving dates for when PFSRs and ESDs will be run to the TDC. Delegation by the Panel is permitted under BSC Section B Paragraph

3.2.1(a) and, as the process relates to the resolution of Trading Disputes, is a delegation to the TDC that is permitted under BSC Section W Paragraph 2.2.3.

4.3 Furthermore, to ensure that the Trading Disputes rectified through PFSRs and ESDs since Modification P256 are considered compliant, ELEXON proposes that the Panel authorises the retrospective approval for the run dates for disputes rectified by PFSR and ESD since November 2010.

5. Recommendations

5.1 We invite you to:

- a) **APPROVE** delegation of authority of the process detailed in BSC Section W Paragraph 4.2.2 to the Trading Disputes Committee; and
- b) **APPROVE** the retrospective approval of all Post-Final Settlement Runs and Extra-Settlement Determinations that have been performed, as a result of a TDC determination, since November 2010.

List of Attachments:

Attachment A – Redlined BSCP11 Section 5.5 and 5.6

Attachment B – Redlined Section W Paragraph 4.2.2

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