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Rae McQuade
GISB - Executive Director

RE: Amoco Comments on R97035 and R97060

I have individually commented on both Trading Partner Agreements nonetheless they are a common subject. I must however state a preference here for R97035 (so-called Model 1) as it is the original MTPA only modified to include internet reference which was the only charge I thought we agreed to entertain. I believe that R97060 (so-called Model 2) is too much a “retrade” of provisions that were hard fought and conceded in April, 1995. At this time, there is not convincing evidence that the original MTPA is “wrong” but I accept that some tweaking would be acceptable if GISB was to open it up. Additionally, I strongly support that GISB have only one TPA standard.

RP96035 (Model 1):

I have the following comments on this stand-alone agreement.

1. Section 1.1 of the agreement provides in part:

Any transmission of data pursuant to this Agreement which is not a Document shall have no force or effect between the parties. . .

Although the agreement tells us what a Document is (an “agreed upon transaction set”; see first sentence of Section 1.1), the agreement is not completely clear on the vital question—when is a transmission of data “not a Document”? The troublesome case is that of error: suppose I intend to utilize, for example, Transaction Set # 850 but through error I scramble things up a bit and what arrives at the other end isn’t precisely Transaction Set # 850, although it is recognizably similar to Transaction Set # 850 and does convey intelligibly the message that I wanted to convey for purposes of the underlying contract. In this case, is my transmission a Document or not? If it’s not—on the analysis that because of my error it deviates from complete conformity with Transaction Set # 850 it arguably loses all effect. This is a harsh result. If we want to make clear that it’s not an intended result, we should add the following as a new sentence after the sentence quoted above:

For purposes of the preceding sentence, a transmission of data which utilizes a transaction set that the parties have agreed upon in the manner described above in this Section 1.1 shall not lose its status as a Document merely because it contains an incidental error.

2. Section 3.1 should add the following as a new paragraph immediately after “[C] such additional terms and conditions as may be determined in accordance with applicable law”:

If none of options A, B and C is chosen above, then that fact shall evidence the intent of the parties that in the absence of any other written agreement applicable to any Transaction made pursuant to this Agreement such Transaction shall be without effect.

This is what seems to be intended anyway “in the absence of any other written agreement applicable . . .” rather than making this TPA anything more than an instrument that describes the exchange of data necessary to effectuate some other written contract.

3. The last sentence of Section 3.2 provides:

No information contained in any Document shall be considered confidential except as provided by the applicable agreements set forth in the preamble hereof between the parties, other written agreements between the parties or by applicable law.

I think the word “written” should be deleted from the phrase “other written agreements” in that sentence. Without that deletion, an oral agreement by the parties (including a tape-recorded agreement) to give confidential treatment to the information contained in a Document will arguably be nullified.

4. Reference to Keys and Versions could be added in the text (even though referenced in the exhibits) to provide further explanation for their use. An enforceability provision for adopting new versions would be an addition of some interest.

5. Change lines 238 and 249 of the appendix to read.

Common Code Identifier

and thus remove the registered trademark.

R97060 (Model 2):

I have the following comments on this stand-alone agreement.

1. Section 1.1 of the agreement provides in part:

Any transmission of data pursuant to this Agreement which is not a Document. . . shall have no force or effect between the parties.

Although the agreement tells us what a Document is (an “agreed upon transaction set”; see first sentence of Section 1.1), the agreement is not completely clear on the vital question—when is transmission of data “not a Document”? The troublesome case is that of error: suppose I intend to utilize, for example, Transaction Set #850 but through error I scramble things up a bit and what arrives at the other end isn’t precisely Transaction Set #850 although it is recognizably similar to Transaction Set #850 and does convey intelligibly the message that I wanted to convey for purposes of the underlying contract. In this case, is my transmission a Document or not? If it’s not—on the analysis that because of my error it deviates from complete conformity with Transition Set #850—it arguably loses all effect. This is a harsh result. If we want to make clear that it’s not an intended result, we should add the following as a new sentence after the sentence quoted above:

For purposes of the preceding sentence, a transmission of data which utilizes a transaction set that the parties have agreed upon in the manner described above in this Section 1.1. shall not lose its status as a Document merely because it contains an error.

2. Section 1.2 has diminished the obligation of each to “provide and maintain the equipment, software, services and testing necessary to effectively and reliably transmit and receive Documents.” by deleting those words.

3. The last sentence of Section 2.1 provides:

No Document shall have any effect (a) for which the HTTP response is not received by Sender, or , if applicable, the other time-stamp receipt record is not available to Sender, . . .”

Suppose that (i) a few minutes before a deadline a shipper transmits a transportation nomination to a pipeline in the form of an EDI Document; (ii) the transmission is successful, in the sense that the Document is accessible to the pipeline at its receipt computer; and (iii) through no fault of the sender the HTTP response is not received by the Sender (or the other time-stamp receipt is not available to Sender.) The provision quoted at the beginning of this Comment seems to require that in my example the sender nomination will be of no effect and that the sender (absent a very fast re-send) will miss the nomination deadline. This seems to be harsh treatment for the party who did nothing wrong and was timely. If this all makes sense, then it would seem to me that the following material should be eliminated from the last sentence of Section 2.1:

(a) for which the HTTP response is not received by Sender, or, if applicable, the other time-stamp receipt record is not available to Sender,

Where is the consequence for the receiver who fails to respond? (as Model 1 does in Section 2.2.5)

4. The fourth sentence of Section 2.2. provides:

If there has been a proper receipt by Sender of a Functional Acknowledgment to a Document indicating error. . . the Document may not be relied upon by either party as an effective Document for any purpose.

This raises the same question as was discussed in Comment 1, namely: if a Document contains an error but the error does not prevent the Document from intelligibly conveying the information which the sender needs to convey, do we want to strip the Document of all effect because of the error it contains? The question takes on the most urgency in the situation in which the transmission of the Document in its erroneous state occurs prior to a deadline fixed by an underlying business standard (where even the acknowledgment is often the deadline) and the transmission of the Document in its corrected states occurs after that deadline.

5. What happen to the “Garbled Transmission” treatise in Model 1 Section 2.4 which carried some obligation?

6. The last sentence of Section 3.2 provides:

No information contained in any Document shall be considered confidential except as provided by the applicable agreements set forth in the preamble hereof between the parties, other written agreements between the parties or by applicable law.

I think the word “written” should be deleted from the phrase “other written agreements” in that sentence. Without that deletion, an oral agreement by the parties (including a tape-recorded agreement) to give confidential treatment to the information contained in a Document will arguably be nullified.

7. Section 4.2 is unacceptable when it states that the agreement is not severable and would invalidate remaining provisions. This is the opposite of the same Section 4.2 in the original MTPA and Model 1.

8. In Section 4.4, there needs to be provision for selecting [Canada] as a printed choice.

9. Enforcing Version changes in Section 4.7 is a new concept and deserves some more discussion.

10. In order for the Appendix to have Section 4.0 Security Procedures, it must be assumed that this description would not change for various Transaction sets or Exhibits. This is not the likely situation and would be better placed in the Exhibit.

Sincerely,

|Signed|

Thomas G. Ehinger
(Amoco’s GISB Coordinator)