

## Disputes Committee Terms of Reference V2.0

The Disputes Committee (DC) has been established in accordance with Schedule 9 of the Market Arrangements Code (MAC).

Unless otherwise stated, words and expressions that are used in the Terms of Reference (ToR) shall have the meanings and application attributed to them under the MAC.

Changes to the ToR can be proposed to the Panel at any time. All changes to the ToR will be voted on, in line with the Panel operating procedures.

'For the avoidance of doubt in the event of any possible conflict the MAC overrides the ToR'

### Overview

The DC shall be established to support the Panel in fulfilling its obligations in relation to investigating and resolving all types of Disputes between Parties. The Panel may choose to delegate any functions related to all types of Disputes to the DC.

In accordance with Section 1.2.3 of Schedule 9 of the MAC, the Panel shall not delegate any powers, functions or responsibilities of the Panel to the DC under the Wholesale-Retail Code which do not relate to the resolution of Disputes (but without prejudice to the functions and responsibilities expressly assigned to the DC under Schedule 9 of the MAC).

## 1 Role and Functions

The principal functions of the DC are to:

- a) Investigate and resolve all Disputes in accordance with the provisions of Schedule 9 (Disputes Committee), and Section 17 of the MAC, and in relation to one or more Wholesale Contracts, consistently with the provisions of the Wholesale-Retail Code;
- b) Monitor the operation of and recommend modifications to the Code Subsidiary Documents (CSDs) which support the procedures for resolving all types of Disputes; and
- c) Submit recommendations to the Panel for the Panel to consider in respect of modification of the Wholesale-Retail Code including any Code Subsidiary Documents arising out of the activities of the DC under Schedule 9 of the MAC.

In accordance with Section 1.2.2 of Schedule 9 of the MAC, the DC shall have no power to decide any matter and no competence to discharge any function or to exercise any power, other than as expressly provided in Schedule 9 of the MAC or assigned to it by the Panel pursuant to Schedule 9

## 1.1 Annual Report

In accordance with Section 1.12.1 in Schedule 9 of the MAC, the DC shall prepare an annual report for the Panel concerning Disputes, setting out the following information in respect of the preceding year ended 31<sup>st</sup> March:

- a) Information on the number and type of Disputes considered including details of outstanding and pending work of the DC;
- b) Procedures agreed by the DC for use in the future resolution of Disputes; and
- c) Any other matter the DC deems appropriate.

If approval of the report at a meeting of the DC is not unanimous, the views of any dissenting DC Members present at the meeting shall be reflected in the report.

## 2 Membership

### 2.1 Chair and Secretary

In accordance with Section 1.5.1 of Schedule 9 of the MAC, the Panel shall appoint the independent Chair of the DC. The Chair's role will be to chair meetings, facilitate discussions, and encourage consensus but shall have no vote.

The DC shall have a disputes secretary who shall be a person provided by the Market Operator. They will be responsible for taking the minutes, agreeing and circulating agendas, scheduling meetings and producing the papers and reports, on behalf of the DC. The secretary will also attend meetings to support the activities of the DC and advise on the market codes and Dispute matters.

The secretary will neither vote nor be a member of the DC, as stated in Section 1.11.2 of Schedule 9 of the MAC.

### 2.2 Voting Members

In accordance with Section 1.3.1 of Schedule 9 of the MAC, the DC shall be composed of 10 of the following voting members:

- Five (5) drawn from Wholesaler members; and
- Five (5) drawn from Retailer members (with no less than two (2) members drawn from Associated Retailers and two (2) members drawn from Unassociated Retailers).

DC Members shall be appointed by the Panel for a term of office of one (1) year, but the initial term of office shall be up until the 31<sup>st</sup> October 2021, unless otherwise varied by the Panel. If the DC is not fulfilling its obligations as set out in the market codes and these ToR, the DC Chair has the right to review membership and make a recommendation to the Panel.

In Accordance with Section 5.7 of the MAC, each DC Member shall act impartially and independently of the interests of their employer and of any person or class of persons in exercising their functions under Schedule 9 of the MAC.

Before being appointed as a DC Member, each DC Member shall provide a member confirmation to the Market Disputes Committee ToR V2.0

Operator that they agree to being a DC Member. Members must also provide a letter from their employer agreeing that they may act as a DC Member.

### 2.3 Non-Voting Attendees and Representatives

In accordance with Sections 1.5 and 1.6 of Schedule 9 of the MAC, the following non-voting attendees or representatives are entitled to attend, to speak but not vote at any DC:

- The independent Chair
- A representative of the Market Auditor
- A representative of the Authority
- One (1) Panel sponsor.

Each person appointed shall be entitled to attend and speak at any such meeting but shall have no voting rights and shall not be a member of the DC.

The DC Chair may appoint a substitute in their sole discretion if they are unable to attend a meeting of the DC.

The DC Chair may invite any individual to attend a meeting of the DC in order to speak to particular items on the agenda, who may be an expert or wider industry representative, but they shall have no vote in the DC, as set out in Section 1.7.1 of Schedule 9 of the MAC.

### 2.4 Alternates

If a DC Member cannot attend, the DC member must propose an Alternate. The Alternate can be any individual notified to the DC secretary as soon as reasonably practical before the DC meeting. Alternates should possess sufficient knowledge and expertise to act as a DC Member.

Subject to the approval of the DC Chair, the Alternate may attend the DC Meeting and vote and speak as a DC Member.

In accordance with Schedule 9, section 1.3.2, a person appointed as an Alternate, is bound by the provisions of the code. Alternates must act impartially, in the best interests of the market and should not be representative of or have regard to the interests of anybody or person, including the DC Member that appointed them. Alternate Members must also provide a letter from their employer agreeing that they may act as an Alternate DC Member.

If an Alternate attend a meeting, as well as their standing DC Member, they attend only as an observer and will have no voting rights.

## 3 Quorum and Decision Making

No business is to occur at the meeting unless a quorum is present. The DC Chair or their substitute must attend the meeting. The DC Chair is not a member of the committee, does not have a vote and will not be counted towards the quorum. Therefore, a quorum is a minimum of at least five (5) voting DC members including:

- Two (2) Wholesaler members
- Two (2) Retailer members
- Either One (1) Wholesaler or one (1) Retailer member.

DC Members must inform the DC secretary if they or their Alternate is unable to attend, wherever possible, at least five (5) Business Days prior to the meeting.

If a quorum of DC Members has not confirmed attendance, the DC Chair may determine that the meeting should be cancelled, and a notification be issued to DC Members no later than five (5) Business Days prior to the meeting. The meeting will be deemed as cancelled if no DC Member has notified the DC secretary that they object to the cancellation, not later than three (3) Business Days before the meeting.

In the event that a meeting of the DC is convened, and a quorum is not present within one hour, the meeting will be adjourned and re-scheduled by the DC secretary at the earliest convenience.

A meeting shall be quorate if the necessary DC members are present in person at the meeting or are contactable by telephone or video conference call.

### 3.1 Voting Procedure

Votes will not be attributable to individual DC Members. Any decision made by the DC shall be decided by a simple majority of voting Members.

When voting on any one decision, each DC Member shall be entitled to exercise one (1) vote.

## 4 Secretariat

The Market Operator will provide secretariat services and appoint the DC secretary. The DC secretary will neither vote nor be a member of the DC, as stated in Schedule 9 section 1.11.2.

The DC secretary should:

- Act as advisor to the DC Chair and DC Members on matters of compliance and processes;
- Ensure that the DC Chair, DC Members and the Market Operator remain aware of the Panel's priorities and relevant requirements;
- Provide briefings to the DC Chair and Panel Secretary after each Panel meeting;
- Provide, or facilitate the provision of, appropriate support to the DC and DC Members as required – including on a one to one and/or confidential basis as appropriate;
- Have a proactive role to process/abstract and supply relevant material to DC if workload were to become high or materials voluminous;
- Act under delegated authority as the face of the DC when liaising with stakeholders and reporting on DC matters to others; and
- Ensure they declare and manage any conflict of interest when acting as the DC secretary (as per section 9 of these ToR)

In accordance with Section 17.4.5 of Section 17 of the MAC, where a Dispute is referred to the DC for resolution, the DC secretary shall:

- a) Collate all relevant information, documentation and reports sent by the Trading Parties to the Market Operator in respect of the Disputes; and
- b) Include the Dispute on the agenda of the next meeting.

## 5 Proceedings of the Meeting

### 5.1 Frequency of Meetings

A calendar of provisional meetings dates will be maintained by the DC secretary and published at least six (6) months in advance. DC meetings will usually be scheduled once a month.

The DC may hold additional meetings as and when required, subject to when Disputes are raised. Meetings may be cancelled if there is insufficient business, on the agreement of the DC Chair. In such cases, the DC secretary will notify DC Members (and confirm on the website) that the meeting is cancelled not later than five (5) Business Days prior to the meeting. The meeting will be deemed as cancelled if no DC Member has notified the DC secretary that they object to the cancellation, not later than three (3) Business Days before the meeting.

Additional meetings may be held at such a time and place as notified to the DC Members by the DC secretary in accordance with these ToR.

Unless otherwise decided by the Panel, the DC secretary shall convene DC meetings by giving notice via email at least five (5) Business Days prior to the proposed meeting, accompanied by publishing an agenda and any non-confidential papers on the website, as necessary. A copy of such notice and papers shall also be sent to any Alternate appointed.

The custom and practice is that there will be no late papers issued outside of the agreed meeting notice period, which in relation to documentation and evidence under function a) in section 1 above, shall be no less than ten (10) Business Days prior to the meeting date (subject always to having been submitted to the Market Operator five (5) Business Days prior to the start of the ten (10) Business Day period), and in all other cases, no less than five (5) Business Days prior to the meeting date. From time to time, there may however be a need for additional matters or late papers, and the approach will be agreed by the DC Chair on a case by case basis. The DC secretary will provide notice to DC Members and the other persons entitled to receive notice, as soon as reasonably practical. Late papers will only be considered upon the agreement of DC Members (by the usual majority) and provided there is no objection from any of the affected Trading Parties to the Dispute. If the late papers are considered material to the Dispute by the DC, then it may elect to defer the Dispute to the next scheduled meeting.

Where the timescales for submission cannot be met, the DC secretary will place the Dispute on the agenda of the next following DC Meeting.

### 5.2 Raising and Escalation of Disputes

This shall be in accordance with the MAC, sections 17.2 and 17.3.

### 5.3 Urgent Meetings

Where a Trading Party considers a Dispute is urgent they shall inform the Market Operator who will send the Dispute and any evidence to support it to the DC Chair. The DC Chair shall direct the DC secretary to convene an extraordinary DC Meeting (in accordance with section 17.4.6 (b) of the MAC) , unless a DC meeting is already scheduled to take place within the next three (3) Business Days. The

Dispute will be added to the agenda for the first available meeting (whether scheduled or extraordinary). The DC secretary shall within one (1) Business Day update the Dispute on the Market Operator's website to include the date of any extraordinary DC meeting, or its consideration at an already scheduled DC meeting (together with updated agenda).

At the extraordinary DC Meeting (or DC Meeting), the members will decide if the Dispute is urgent (using the Urgency Criteria detailed in 5.4). If the Dispute is deemed urgent, the DC secretary shall promptly update the Dispute on the Market Operator's website to show the status as urgent and ensure that all affected Trading Parties to the Dispute are informed of the change in status to urgent, and provided the opportunity to submit their evidence. The Trading Parties are required to provide the required evidence to support the DC in their decision making within the timescale set by the DC. If the Dispute is not deemed to be urgent, then the Dispute will proceed as per the normal timescale.

If any party disagrees with the decision on urgency, the DC can set a timeline for the disputing party to provide additional evidence to the DC secretary supporting their assertion that the Dispute is urgent for further consideration by the DC. The DC decision on urgency in respect of this further evidence would be final and if they determine that the Dispute is not urgent, the Dispute will be considered in accordance as per normal timescale.

#### 5.4 Urgency Criteria

When determining whether a Dispute should be given urgent status, the DC will determine whether it meets at least one of the following principles:

1. It must be linked to an imminent issue or a current issue that if not urgently addressed may cause:
  - a) A material impact on a party or parties, customers, or other stakeholder(s);
  - b) A significant impact on the safety and security of the Central Market Operating System; or
  - c) A party to be in breach of any relevant legal obligations; and/or
2. The issue provides a material and immediate risk of causing a significant impact on the development and/or operation of the business retail market.

#### 5.5 Monitoring of Decision Actions

The Market Operator shall be responsible for monitoring any actions resulting from the decision as set out by the DC in accordance with section 17.4.11 of the MAC. Should any Trading Party not follow through with the required actions, the Market Operator is responsible for informing the DC. The DC will meet with the non-compliant Trading Party to determine the appropriate action. This allows the DC to understand the reasons why the Trading Party has not followed through on the action plan, with the option to adjust the actions, if necessary.

#### 5.6 Meetings via Teleconference

A meeting of the DC may consist of a tele or videoconference between members. A DC Member taking part in such a conference or telephone call is deemed to be present in person and is entitled to vote and be counted in the quorum accordingly.

#### 5.7 Minutes of Meetings

The DC secretary shall minute the proceedings and resolutions of all meetings, including the names of those in attendance. The DC secretary shall ensure that minutes of the meetings of the DC (including key points of discussion, decisions, the failure to make a decision in relation to a Dispute and the reason for such failure) are published on the Market Operator's website within 30 days of such meeting taking place, as outlined in Section 1.8.5 of Schedule 9 of the MAC. As such, the minutes will be issued to DC Members for approval via correspondence.

The outcome in respect of a Dispute will be minuted, however the discussion in respect of individual Disputes will be treated as confidential and not published on the website. It is noted that the DC must balance the needs of market transparency with the rights of individuals and organisations to privacy and remain compliant with competition law.

The DC secretary will also provide regular updates to the Panel on the activities of the DC, in the form of a monthly (or otherwise agreed) DC Report, as determined by the Panel and agreed by the DC Chair. The DC secretary will also record and maintain a DC Action Log of all the actions that arise from each meeting. The DC secretary shall ensure the outcome of all DC decisions are communicated to the Panel.

## 5.8 Register of Decisions Document

A Register of Decisions document, detailing historic DC decisions in regard to Disputes will be made available as and when requested by a Trading Party. The DC shall have regard to previous decisions, when deciding any Dispute.

## 5.9 Recording and Broadcasting

For transparency, audio and/or video recording may be made of DC meetings. Additionally, the DC meetings may be broadcast by webinar. The agreed recording and broadcasting policy is as approved by the Panel and published on the Market Operator's website.

# 6 Code of Conduct

DC Members and all other attendees must refrain from the use of inappropriate or offensive behaviour during the meetings. This includes, but is not limited to:

- Defamatory comments regarding another person or persons;
- Unsubstantiated statements that could be considered slanderous or subject to libel proceedings;
- Use of foul language; and
- Use of threatening language towards other persons whether present or not.

The DC Chair reserves the right to remove any attendee in the event that they consider the guidelines set out above are breached, or to adjourn the meeting as appropriate.

# 7 Transparency and Confidentiality

Any meetings (or portions of meetings) of the DC where confidential information will be considered (e.g. in relation to the performance of a particular Trading Party, or where commercially sensitive or with the potential to breach competition law) shall be held in confidence. While custom and practice will be to



have open session meetings, exceptions may apply which call for a closed meeting session.

Subject to the above constraints, any Panel Member is entitled to attend closed sessions of the DC, subject to informing the DC Chair first.

In the event of closed session papers or minutes, the necessary paperwork will be circulated to DC Members and will not be published on the Market Operator's website.

The DC may invite such Trading Party and/or the Market Operator to send a representative to attend the relevant part of such meeting. DC Members shall not disclose confidential information received in that capacity. For the avoidance of doubt, a DC Member shall not disclose to their employer, confidential information obtained as a DC Member.

## 8 Conflict of Interest

DC Members shall declare in advance any actual or perceived conflict of interest.

In regard to a conflict of interest in reference to a DC Member and a Dispute, the DC Member shall declare the conflict of interest at the start of the Dispute, indicating whether:

- a) The DC Member is currently employed by a Trading Party currently involved in the Trading Dispute;
- b) The DC Member currently works in the department area (for any of the parties in the Dispute) in which the Dispute was raised or received;
- c) The DC Member currently receives or is likely to receive a direct financial benefit from a Trading Party currently involved in the Dispute (to include ownership and bonuses/rewards that may be related to the Dispute, but to exclude ordinary income); and
- d) The DC Member has any other potential interests which may conflict with their DC duties.

The DC Chair will determine at their discretion if the DC Member is ineligible to vote.

The DC Chair will determine, at their discretion, whether an DC Member that has declared a conflict of interest should be present for Dispute discussions or relevant votes.

In regard to the DC secretary, this being the Market Operator acting in an independent and administrative role to facilitate the resolution of a Dispute, they must not be connected with the terms of such Dispute. (Section 17.1.1. (a) of the MAC). This applies to any Market Operator team or individual involved in providing secretariat services or investigative services, or otherwise facilitating the resolution of a Dispute. The DC may require them to sign a legally binding letter confirming they are not connected with the terms of the specific Dispute, that they are able to act independently, and agree to maintain the confidentiality of the Dispute.

In the unlikely event that such measures cannot be implemented, then the DC may decide that an independent third-party be appointed to act as the DC secretary for that specific Dispute, including undertaking analysis or other investigations into a Dispute.

## 9 Expenses

Where the Panel agrees, any DC Member can claim reasonable costs and expenses incurred in attending meetings or otherwise conducting business. The agreed Panel and Committee Expenses





Policy is published on the Market Operator's website.

## 10 External Communication

All DC members and attendees are expected to act in accordance with the Panel Communication Policy as published on the Market Operator website.