

# Trading Disputes Committee Terms of Reference v1.2

The Trading Disputes Committee (TDC) 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.

## 1. Overview

The TDC shall be established to support the Panel in fulfilling its obligations in relation to investigating and resolving Trading Disputes between Trading Parties. The Panel may choose to delegate any functions related to Trading Disputes to the committee.

In accordance with Section 2.2.3. of Schedule 9 of the MAC, the Panel shall not delegate any powers, functions or responsibilities of the Panel to the TDC under the Wholesale-Retail Code which do not relate to the resolution of Trading Disputes (but without prejudice to the functions and responsibilities expressly assigned to the TDC under Schedule 9 of the MAC).

## 2. Role and Functions

The TDC will provide advice, recommendations and support to the Market Operator on request to assist a Trading Party in resolving Trading Disputes and the effect of resolution of these Trading Disputes, in accordance with Schedule 9 of the MAC.

The principal functions of the TDC are to:

- a) Investigate and resolve all Trading Disputes in accordance with the provisions of Schedule 9 (Trading Disputes Committee), 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 Trading 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 Trading Disputes Committee under Schedule 9 of the MAC.

In accordance with Section 2.2.2 of Schedule 9 of the MAC, the TDC 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.

### 2.1 Annual Report

In accordance with Section 2.12.1 in Schedule 9 of the MAC, the TDC shall prepare an annual report for the Panel concerning Trading 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 Trading Disputes considered including details of outstanding and pending work of the Trading Disputes Committee;
- b) Procedures agreed by the Trading Disputes Committee for use in the future resolution of Trading Disputes; and
- c) Any other matter the Trading Disputes Committee deems appropriate.

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

## 3. Membership

### 3.1 Chair and Secretary

In accordance with Section 2.5.1 of Schedule 9 of the MAC, the Market Operator shall appoint the independent Chair of the TDC, subject to prior consultation with the Panel. The Chair's role will be to chair meetings, facilitate discussions, and encourage consensus but shall have no casting vote.

The TDC 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 TDC. The secretary will also attend meetings to support the activities of the TDC and advise on the market codes and Trading Dispute matters.

The secretary will neither vote nor be a member of the TDC, as stated in Section 2.11.2 of Schedule 9 of the MAC.

### 3.2 Voting Members

In accordance with Section 2.3 of Schedule 9 of the MAC, the TDC shall be composed of 10 of the following voting members:

- Four (4) with Wholesale experience; and
- Six (6) Retailers (with no less than 2 members drawn from Associated Retailers and 2 members drawn from Unassociated Retailers).

TDC Members shall be appointed by the Panel for a term of office of one (1) year, which may be extended subject to the review of the Panel. If the TDC is not fulfilling its obligations as set out in the code and this ToR, the TDC Chair has the right to review membership and make a recommendation to the Panel.

Each TDC Member shall act impartially and independently of the interests of their employer and of any person or class of persons and, in exercising the functions under this Schedule 9 of the MAC.

Before being appointed as a TDC Member, each TDC Member shall provide a member confirmation to the Market Operator that they agree to being a TDC Member. Members must also provide a letter from their employer agreeing that they may act as a TDC Member, in accordance with Section 5.7.1 and Section 2.4.1(i) of Schedule 9 of the MAC.

### 3.3 Non-Voting Members

In accordance with Section 2.6 of Schedule 9 of the MAC, the following non-voting members are entitled to attend, to speak but not vote at any TDC:

- The independent Chair;

- A representative of the Market Auditor;
- An observer representing the Authority; and
- One (1) Panel Sponsor (without a vote).

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 TDC.

The TDC Chair may invite any individual to attend a meeting of the TDC in order to speak to particular items on the agenda but they shall have no vote in the TDC, as set out in Section 2.7.1 of Schedule 9 of the MAC.

### 3.4 Alternates

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

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

In accordance with Schedule 9 of the MAC, 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 TDC Member that appointed them.

If an Alternate attends a meeting as well as their standing TDC Member, he or she attends only as an observer and will have no voting rights.

## 4. Quorum and Decision Making

No business is to occur at the meeting unless a quorum is present. A quorum is a minimum of at least five (5) voting TDC members including:

- Two (2) Wholesaler members; and
- Three (3) Retailer members.

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

If a Quorum of TDC Members has not confirmed attendance, the TDC Chair may determine that the meeting should be cancelled and a notification be issued to TDC Members no later than five (5) Working Days prior to the meeting. The meeting will be deemed as cancelled if no TDC Member has notified the TDC Secretary that he or she objects to the cancellation, not later than three (3) Working Days before the meeting.

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

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

#### 4.1 Voting Procedure

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

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

### 5. Secretariat

The Market Operator will provide secretariat services and appoint the TDC secretary. The TDC secretary will neither vote nor be a member of the TDC, as stated in Schedule 9 section 2.11.2.

The TDC secretary should:

- Act as advisor to the TDC Chair and TDC Members on matters of compliance and processes;
- Ensure that the TDC Chair, TDC Members and the Market Operator remain aware of the Panel's priorities and relevant requirements;
- Provide briefings to the TDC Chair and secretary after each Panel meeting;
- Provide, or facilitate the provision of, appropriate support to the TDC and TDC 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 TDC if workload were to become high or materials voluminous; and
- Act under delegated authority as the face of the TDC when liaising with stakeholders and reporting on TDC matters to others.

In accordance with Section 3.5.2 of Schedule 10 of the MAC, where a Trading Dispute is referred to the TDC for resolution, the TDC secretary shall:

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

### 6. Proceedings of the Meeting

#### 6.1 Frequency of Meetings

A calendar of meetings will be maintained by the TDC secretary and published six (6) months in advance.

The TDC will meet as and when required, subject to when Trading Disputes are raised. Meetings may be cancelled if there is insufficient business on the agreement of the TDC Chair. In such cases, the secretary will notify TDC Members (and confirm on the website) that the meeting is cancelled not later than five (5) Working Days prior to the meeting. The meeting will be deemed as cancelled if no TDC Member has notified the TDC Secretary that he or she objects to the cancellation, not later than three (3) Working Days before the meeting.

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

Unless otherwise decided by the Panel, the TDC Secretary shall convene TDC meetings by giving notice via email at least five (5) Working 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 practice is that there will be no late papers issued outside of the agreed meeting notice period. From time to time, there may however be a need for additional matters or late papers, and the approach will be agreed by the TDC Chair on a case by case basis. The TDC secretary will provide notice to TDC Members and the other persons entitled to receive notice, as soon as reasonably practical. Late papers will only be considered upon the agreement of TDC Members.

Where a Trading Dispute is received by the TDC Secretary more than ten (10) Business Days prior to the next committee meeting, the TDC secretary will place the Trading Dispute on the agenda of the next Committee Meeting, otherwise it will be placed on the following meeting agenda.

## 6.2 Urgent Meetings

Where the TDC secretary, with the agreement of the TDC Chair, is of the opinion that an urgent meeting is required to consider any Trading Dispute, the five (5) Working Day notice period shall be waived.

The TDC secretary will notify TDC Members by email and/or telephone as soon as reasonably practical prior to the calling of an urgent meeting.

## 6.3 Meetings via Teleconference

A meeting of the TDC may consist of a tele- or video-conference between members. A TDC 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.

## 6.4 Minutes of Meetings

The TDC secretary shall minute the proceedings and resolutions of all meetings, including the names of those in attendance. The TDC secretary shall ensure that minutes of the meetings of the TDC (including key points of discussion, decisions, the failure to make a decision in relation to a Trading 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 2.8.5 of Schedule 9 of the MAC. As such, the minutes will be issued to TDC Members for approval via correspondence.

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

The secretary will also provide regular updates to the Panel on the activities of the TDC, in the form of a monthly (or otherwise agreed) Committee Report, as determined by the Panel and agreed by the TDC Chair.

To facilitate transparency, the TDC secretary will publish a Headline Report listing the TDC's decisions within three (3) Working Days of the meeting. The TDC has delegated authority to the TDC Chair to approve the Headline Report.

The TDC secretary will also record and maintain a Committee Action Log of all the actions that arise from each meeting. The TDC secretary shall ensure the outcome of all TDC decisions are communicated to the Panel.

#### 6.5 Register of Decisions Document

In accordance with Section 2.4.1 (g) in Schedule 9 of the MAC, a Register of Decisions document, detailing historic TDC decisions in regards to Trading Disputes will be made available as and when requested by a Trading Party.

#### 6.6 Recording and Broadcasting

For transparency, audio and/or video recording may be made of TDC meetings. Additionally, the TDC 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.

## 7. Code of Conduct

TDC Members and all other attendees must refrain from the use of inappropriate or offensive behavior 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 TDC 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

## 8. Transparency and Confidentiality

Any meetings (or portions of meetings) of the TDC where confidential information will be considered (e.g. in relation to the performance of a particular Trading Party) shall be held in confidence. While custom practice will be to have open session meetings, exceptions may apply which call for a closed meeting session.

Any Panel Member is entitled to attend closed sessions of the TDC, subject to informing the TDC Chair first.

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

The TDC may invite such Trading Party and/or the Market Operator to send a representative to attend the relevant part of such meeting. TDC Members shall not disclose confidential information received in that capacity.

## 9. Conflict of Interest

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

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

- a) The TDC Member is currently employed by a Trading Party currently involved in the Trading Dispute;
- b) The TDC 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 TDC 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 TDC Member has any other potential interests which may conflict with their TDC duties.

The TDC Chair will determine at their discretion if the TDC Member is ineligible to vote. However, the TDC Member may still discuss the Trading Dispute.

## 10. Expenses

Where the Panel agrees, any Committee member who is not employed by the Market Operator 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.

## 11. External Communication

TDC Members may be approached by members of the press or requested to speak at public events either on behalf of the Committee or in personal capacity. The agreed Communication Policy is as approved by the Panel and published on the Market Operator's website.