

TDC Meeting 01 - Minutes

7th June 2017 | 10:30 – 15:00
16 High Holborn, London WC1V 6BX

Status of the minutes: Final

MEMBERS PRESENT

Name	Role
Elsa Wye	Chair
Julian Tranter	Committee Member (Wholesaler)
Martin Mavin	Committee Member (Wholesaler)
Cleo Acraman	Committee Member (Associated Retailer)
Richard Stanbrook	Committee Member (Associated Retailer)
Nick Hayes	Committee Alternate Member (Unassociated Retailer)
Rupert Redesdale	Committee Member (Unassociated Retailer)
Jo Dando	Committee Member (Associated Retailer)
Abu Rashid	MOSL (Secretary)
Lewis Jones	MOSL (Presenter)
Harry Osei-Tutu	MOSL (Presenter)
Nii Chong	PwC (Observer)
Tony Thomas	PwC (Observer)

APOLOGIES

Name	Role
Tim Orange	Committee Member (Wholesaler)
Colleen John	Committee Member (Associated Retailer)

OPEN SESSION

1. Terms of Reference (ToR)

PURPOSE: FOR INFORMATION

MOSL presented the Trading Disputes Committee's (TDC) ToR, as approved by the Panel.

- 1.1 A member requested clarification on the governance arrangements relating to the TDC. It was stated that the TDC is delegated authority to make decisions regarding Trading Disputes, with Panel backing. The Panel is informed of what is discussed at all TDC meetings. The TDC can make recommendations to the Panel for any changes or enhancements to the Codes that relate to the TDC process.
- 1.2 It was agreed that if any TDC members have a potential conflict of interest they would declare this in advance of any relevant discussions to ensure that the TDC is able to act impartially. An action was opened for MOSL to expand on the ToR Conflict of Interest section.
- 1.3 A member asked for clarification on MOSL's role in investigating disputes. It was confirmed that MOSL provides secretariat support i.e. the TDC secretary and will support the TDC in resolving trading disputes through its operations team.
- 1.4 A member questioned whether TDC meetings would continue in the absence of non-associated Retailer members. The meetings would be held so long as they are quorate, with the Chair able to provide an assessment to the Panel of any changes that may be required if they believe that the TDC is not suitably operating.
- 1.5 It was noted that a Panel Sponsor may attend.
- 1.6 If the TDC is unable to come to a majority decision on a Trading Dispute, then the issue can be raised to the Panel who will then recommend on a route of progression; however, it was recognised that ideally the TDC should reach a decision.
- 1.7 A point was made that Trading Disputes could involve any eligible site in the market, regardless of geography.
- 1.8 A member questioned whether multiple meetings would be held to discuss complicated disputes. The intention would be to arrive at a decision for a Trading Dispute in one meeting, to support the quick and effective resolution of problems; however, it was recognized that multiple meetings may be needed if more information was requested by the TDC to make a formalised decision, as there is no time limit in the market codes for coming to a decision on a Trading Dispute.
- 1.9 A member asked whether customers could be involved in the Trading Dispute process and attend meetings. It was confirmed that whilst it was recognised that such issues could have an impact on customer, customers are not signatory to the market codes and the relationship with customers was managed predominantly by Retailers. It was suggested that it may be appropriate to invite CC Water going forwards.
- 1.10 It was agreed that invitations of other attendees would be a case-by-case basis, with any general themes captured and raised to the Panel. It was noted that the TDC should recognise the customer as a key stakeholder in the market.
- 1.11 The Chair requested that TDC members should read the external communication policy on MOSL's website, to ensure that information is consistent across any dispute when talking to people external to the TDC or MOSL.
- 1.12 It was confirmed that the definition of a Trading Dispute is very clearly defined in the Code and narrow. MOSL confirmed that any such raised issue is validated as a Trading dispute as

defined by the Trading Dispute criteria in the Code. This forms part of the MOSL process prior to it being raised at the TDC.

- 1.13 It was confirmed that non-confidential Information on Trading Disputes will be published on MOSL's website. Contract Managers for all Trading Parties will be made aware of disputes and Portfolio Managers could be requested to provide additional support as and when required.

The TDC:

- 1.14 **NOTED** the contents of the Terms of Reference presentation; and
- 1.15 **OPENED** an action for MOSL to review the ToR and a point to be added to the section on Conflict of Interest for members to declare any other potential interests which may conflict with their TDC duties.

ACTION 01_01

2. Trading Disputes Process

PURPOSE: FOR INFORMATION

MOSL presented a detailed process map for Trading Disputes and the steps Trading Parties must take when raising disputes with the Market Operator. This shed light on aspects of the process that members were not familiar with previously and enabled further discussion and dialogue.

- 2.1 A member questioned whether a Retailer can delay payment of outstanding monies to Trading Parties by stating that they are in a Trading Dispute. An action was opened for MOSL to confirm what the market codes state in relation to this.
- 2.2 Members asked how MOSL and the TDC would know whether Trading Parties had met and attempted to resolve disputes prior to submission to the TDC.
- 2.3 It was discussed that the TDC could submit a Change Proposal if members identified any potential enhancements to or gaps in the code.
- 2.4 It was confirmed that costs for Dispute Settlement Runs could be allocated by the TDC and that the committee can approve complete costs to the initiating party if the Trading Dispute is deemed to be vexatious or frivolous.
- 2.5 MOSL noted that they will be providing a summary paper of the dispute scenario to the TDC to aid discussions. A member questioned whether the TDC paper would be submitted whether or not all data had been submitted by Disputing Parties. It was agreed that MOSL would still submit the paper.
- 2.6 It was confirmed that MOSL would answer any questions raised by Trading Parties, in the run-up to a TDC meeting to ensure that Committee Members were not approached or lobbied by Trading Parties. It was agreed that any queries regarding Trading Disputes would be deflected to the TDC secretariat.
- 2.7 An action was opened for MOSL to display a statement on its website to state that any contact from parties or other organisations regarding Trading Disputes should be with the MOSL secretariat and not TDC members.
- 2.8 The level of involvement of the TDC in the arbitration process was discussed. It was stated that the arbiter can request information from MOSL and that the responsibility of bringing in an arbiter was with Trading Parties.
- 2.9 It was mentioned that there is no code obligated timeframe in the market codes for a Disputing Party to fix data. Members discussed what actions the TDC could take to ensure disputes are resolved quickly and efficiently. It was stated that the committee may not be in a position to

understand the complexities of rectifying data on the part of the Disputing Parties. It was agreed that the TDC would take this into account and whether MOSL as the Market Operator also needed to take action when formulating the rectification plan for a dispute.

The TDC:

- 2.10 **NOTED** the contents of Trading Disputes Process;
- 2.11 **OPENED** an action for MOSL to investigate what the market codes state in relation to Trading Parties delaying the payment of outstanding primary charges when involved in a Trading Dispute; and
ACTION 01_02
- 2.12 **OPENED** an action on MOSL to include a Code of Conduct statement on MOSL's website to highlight the impartiality and independence of TDC members and a clarification that Trading Parties' contact should be with the TDC secretariat and not the TDC about specific disputes.
ACTION 01_03

3. Trading Disputes Criteria

PURPOSE: FOR INFORMATION

MOSL presented the criteria needed to be met by Trading Parties when raising Trading Disputes.

- 3.1 It was stated that the remit of the TDC is from 1 April 2017. Members discussed what would happen in the event that a dispute was raised which included data errors prior to 1 April and an action was opened for MOSL to investigate what the market codes state in relation to this.
- 3.2 A member raised a concern about customers being caught in the middle of a dispute and costs increasing due to the dispute not being resolved in a timely manner.
- 3.3 A member questioned whether Trading Disputes need to be raised with the TDC prior to arbitration. The codes do not allow arbitration for disputes before they are submitted to the Trading Disputes Committee. An action was opened for MOSL to review whether arbitration can be invoked prior to submission to the TDC.

The TDC:

- 3.4 **NOTED** the contents of Trading Disputes Process; and
- 3.5 **OPENED** an action for MOSL to investigate what the process will be for Trading Disputes that refer to data errors prior to 1 April 2017 or may encompass pre and post market go-live.
ACTION 01_04
- 3.6 **OPENED** an action for MOSL to investigate when arbitration can be invoked.
ACTION 01_05

4. TDC Scheduled Meeting Dates

PURPOSE: FOR INFORMATION

MOSL presented the scheduled 2017 dates for TDC meetings in an Excel spreadsheet and asked members to confirm their availability by close of business (COB) Friday 9 June 2017.

The TDC:

- 4.1 **NOTED** the scheduled meeting dates;
- 4.2 **AGREED** to inform the secretariat of its availability for meetings by COB 9 June 2017; and

- 4.3 **AGREED** to cancel TDC meetings if there was insufficient business with a cancellation notice of at least five (5) Working Days.

CLOSED SESSION

5. Trading Disputes Case Study

PURPOSE: FOR INFORMATION

MOSL presented the TDC mock paper, in which a case study of a potential Trading Dispute was used to facilitate discussion.

- 5.1 A member suggested that, if appropriate, additional information to support the TDC paper could be provided by Disputing Parties, as well as any additional Trading Parties who have access to data relevant to, or have been impacted by, the dispute.
- 5.2 The question of liability was raised, as there had been a transfer of liability in the case study from the old Retailer to the New Retailer with the customer caught in the middle.
- 5.3 A member mentioned that the case study may not be an actual Trading Dispute as the issue was 'self-correcting' and charges would be repaid over time as the situation would rectify itself. It was also mentioned that the Retailer should have been able to find ways in which to validate charges, potentially avoiding the need to raise a Trading Dispute.
- 5.4 It was stated that data items can only be queried once in a Trading Dispute and that once a dispute has been resolved, another Trading Dispute cannot be raised regarding the same data items.
- 5.5 A question was raised on whether the TDC should be looking at the correctness of data items, or the implications of incorrect ones. It was agreed that it should be the former, as the definition of a Trading Dispute is in the code.
- 5.6 Another question was raised regarding the legal obligation of the new Retailer of a Supply Point to highlight data items that were incorrect prior to transfer. An action was opened for MOSL to investigate the market codes in relation to this.
- 5.7 Members discussed whether the TDC should give advice to Disputing Parties on how they could have avoided the Trading Dispute. It was agreed that this would not be unhelpful, provided the advice was given without prejudice.
- 5.8 It was noted that the apportionment of costs may discourage the market from raising disputes and that this could encourage parties to find an earlier resolution to a dispute before coming to the TDC.

The TDC:

- 5.9 **NOTED** the contents of the case study; and
- 5.10 **OPENED** an action for MOSL to investigate any obligations under the market codes on new Retailers to highlight data items that were incorrect prior to transfer.

6. Any Other Business

6.1 There was no further business and the Chair closed the meeting.