
TDC Actions Update

Meeting Name:	Trading Disputes Committee
Paper Number:	TDC02_01
Meeting Date:	12 th July 2017
Purpose of Paper:	Information
Classification:	Public
Synopsis:	This paper outlines the action points that were raised at the first TDC meeting on 7 th June 2017 and the work MOSL has performed to complete these actions.

RECOMMENDATION:	The TDC is invited to: <ul style="list-style-type: none">• NOTE the contents of this paper; and• AGREE to close the actions.
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1. Overview

At the first Trading Disputes Committee (TDC) meeting on 7th June 2017, a number of actions points were raised by members for investigation and clarification from MOSL, to present the findings at the following TDC meeting. The actions were for MOSL to:

- 1) Review the TDC Terms of Reference 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) Investigate what the market codes state in relation to Trading Parties delaying the payment of outstanding primary charges when involved in a Trading Dispute;
ACTION 01_02
- 3) 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
- 4) 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
- 5) Investigate when arbitration can be invoked.
ACTION 01_05
- 6) Investigate any obligations under the market codes on new Retailers to highlight data items that were incorrect prior to transfer.
ACTION 01_08

2. Actions Update

2.1 Action 01_01: Terms of Reference (ToR) Amendment

It is proposed that Section 9 of the Terms of Reference, Conflict of Interest, is expanded to include point (d):

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.

Any changes to the ToR will need to be approved by the Panel.

2.2 Action 01_02: Delaying Payment of Outstanding Primary Charges

Section 9.7.2 of the business terms states:

If any item or part of an item in an invoice or statement rendered by a Party under this Section 9 is disputed or subject to question, payment of the remainder of the invoice or statement shall not be withheld on those grounds, and the provisions of Section 9.9.2 shall apply to the disputed or questioned item from the time, and to the extent that, it shall subsequently be agreed or determined to have been properly payable. Where a Party wishes to dispute or question an item or part of an item in an invoice or statement, it may only do so in good faith and on grounds which are not vexatious or frivolous.

This would infer that disputed aspects of primary charges can be withheld, where the dispute process has been initiated (it is expected that the required preceding query is included for the purposes of this assessment). It is noted that this is different to market operator charges, which cannot be withheld if disputed.

2.3 Action 01_03: Code of Conduct Statement on MOSL's Website

Both the disputes webpage and TDC webpage have been reviewed for amendments to reference MOSL's code of conduct and communication lines. The draft code of conduct can be seen below:

MOSL will:

- Act in a way which does not show undue preference to any party or place any disputing party at an advantage or disadvantage;
- Ensure information is provided equally to all disputing parties as required;
- Produce a paper for the Trading Disputes Committee (TDC) on all trading disputes, and provide a similar report to the academy of experts if required for Market Operator (MO) disputes to assist decision makers by providing clarity;
- Restrict the sharing of information related to specific disputes to those working in the case management function;
- Promote transparency by publishing summary details of all disputes including the disputing parties, and;
- Review disputes following resolution to identify potential improvements and learnings.

Further to the above, when dealing with MO disputes or Market Arrangement Codes (MAC) disputes in which MOSL is also a disputing party, MOSL will:

- Separate the governance and activities of case management and those involved in the dispute;
- Attend all meetings related to the dispute in separate capacities as case manager and disputing party, and;
- Employ formal communication channels between case managers and dispute representatives on all matters pertaining to the dispute to encourage impartiality and transparency.

2.4 Action 01_04: Data Errors which Encompass Pre and Post Market Go-Live

Parties can raise trading disputes based on errors in primary charges caused by incorrect data items – both of which are defined terms effective from 1 April. However, the term 'data item' includes any data item

defined in the code, including historical data used by the market to determine charges. Therefore, trading parties can raise trading disputes where primary charges are affected, even if the issue is caused by data items that relate to prior to go-live.

2.5 Action 01_05: Invocation of Arbitration

Trading Parties cannot refer a Trading Dispute to arbitration prior to raising the Trading Dispute with the TDC, as outlined in Schedule 9 of the Market Arrangements Code, 1.3.2 (b):

- (b) no Trading Party may refer a Trading Dispute to arbitration unless the Trading Dispute has first been so raised and dealt with in accordance with the provisions of this Schedule 9 (Trading Disputes Committee).

2.6 Action 01_08: New Retailer Highlighting Incorrect Data Items

Sections 1.1.1 and 2.1.1 of CSD0105 lay out responsibility fairly explicitly:

Under Section 4.2.4 of the Market Terms, Data Owners have a general duty to ensure that the Data Items for which they are the Data Owner are up to date, accurate and complete. Under the Market Terms, where the Market Operator wishes to query the accuracy or completeness of Data Item(s), it will request the Data Owner to review and, if necessary, correct these Data Items. Where the Data Owner itself identifies such an error, it is under an obligation to correct the Data Item(s) as soon as it becomes aware of the error. Where another Trading Party wishes to query the accuracy or otherwise of a Data Item for which it is not the Data Owner, they may investigate that matter directly with the Data Owner.

...Wholesalers and Retailers remain responsible at all times for the accuracy and completeness of all Data Items for which they are the Data Owners.

The Data Owner remains responsible for all aspects of data accuracy and maintenance, including identifying issues. A non-impacted party may choose to share any data quality issues it identifies to the Data Owner, however a formal obligation is neither in the codes, nor, in MOSL's view practicable at this current stage of the market.

3. Recommendations

The TDC is invited to:

- **NOTE** the contents of this paper; and
- **AGREE** to close the actions.