

## Competition Law Guidance for the Panel and Working Groups

### 1 DO

1. **Do** familiarise yourself with this 'Competition Law Guidance' before all Panel Meetings and Working Group meetings, and ensure that you understand and comply with it.
2. **Do** ensure that the Terms of Reference for all Working Groups refer to the Panel Objectives, and the competition law parameters of the function(s) delegated by the Panel.
3. **Do** invite the Authority to all Panel Meetings and Working Group meetings, and ensure that it receives copies of all relevant paperwork (e.g. agenda, reports, minutes etc).
4. **Do** draw up and circulate an agenda (together with any materials relevant to the agenda) before all Panel Meetings and Working Group meetings, and ensure that the agenda is followed at the meeting.
5. **Do** restate the Panel Objectives at the start of each Panel Meeting and Working Group meeting, and ensure that this is minuted. The Panel objectives are detailed in Appendix A below.
6. **Do** circulate, or otherwise make available, this 'Competition Law Guidance' at the start of each Panel Meeting and Working Group meeting, and ensure that this is minuted.
7. **Do** terminate a discussion or leave a meeting if you have any competition law concerns, and ensure that this action is minuted. Simply being present when an anti-competitive discussion occurs may be sufficient to implicate a party in any infringement.
8. **Do** share information relevant to the Panel Objectives that is not competitively sensitive. See the 'Don't' section below for a description of competitively sensitive information.
9. **Do** ensure that accurate minutes are taken of all Panel Meetings and Working Group meetings, and of any other discussions between DCUSA parties. Ensure that these minutes capture the attendees, timing, substance of the discussion and any decisions made.
10. **Do** circulate minutes to the DCUSA parties and recommend that attendees retain these minutes, together with the relevant agenda, for their records.
11. **Do** seek legal advice if you have any doubts as to the competition law compliance.
12. **Do** consider whether it would be helpful for DCUSA Ltd's lawyers to attend Working Group and Panel meetings in view of the topics to be discussed.

## 2 DON'T

1. **Don't** share, discuss, or exchange:
  - any information which allows a party to identify the commercial conduct of another party (or parties);
  - any competitively sensitive information (i.e. non-public strategic information about a party's commercial policy), including information relating to a party's current and future pricing strategies, costs, margins, and business plans.
2. In the context of the Charging Methodologies, DNOs should be particularly careful **not** to disclose details of the cost inputs that will be fed into the model in order to generate the use of system charges. Where it is necessary to input values to test a proposed modification, dummy figures should be used where possible. Where it is reasonably necessary to use actual input values, these should first be submitted to the Secretariat, who should make the data anonymous or create average values to then be used by the Working Group.
3. **Don't** reach any agreement or understanding whatsoever regarding the amount of distribution charges or connection charges (noting that the DCUSA defines only the methodology for calculating these charges). The Working Group should focus on the structure of the methodology – it should not agree the charges and then manipulate the model to create the agreed charges.
4. **Don't** reach any agreement or understanding whatsoever with any party (or parties) in relation to prices to be charged or paid, limiting generation or supply, allocating markets or customers, or rigging bids.
5. **Don't** allow discussions between parties to 'spill over' into inappropriate areas, and don't be an active or passive participant in inappropriate discussions.
6. **Don't** allow, encourage, or participate in any scheduled or unscheduled 'shadow' meetings between parties under the auspices of the Panel and/or any Working Group (e.g. before or after Panel Meetings or Working Group meetings).
7. **Don't** do anything that seeks to influence, or may have the effect of influencing, the conduct of a competitor (other than through your normal commercial activities).
8. **Don't** fetter your own commercial freedom of action through discussions with parties.
9. **Don't** collaborate with parties in a way designed to disadvantage particular parties or particular classes of party (e.g. in a way that would disadvantage smaller suppliers as compared to larger suppliers).
10. **Don't** use language that is ambiguous from a competition law perspective.
11. **Don't** 'do nothing' - if you have concerns regarding competition law compliance, always raise these concerns.

## Appendix A – DCUSA Panel Objectives

### 1 THE DCUSA PANEL OBJECTIVES ARE DEFINED IN DCUSA CLAUSE 5.2 AND ARE AS FOLLOWS

In conducting its operations in accordance with this Agreement, the Panel shall act in a manner designed to achieve the following objectives (the Panel Objectives):

- that this Agreement is given full and prompt effect in accordance with its terms and conditions;
- that this Agreement is given effect in such a manner as will facilitate achievement of the DCUSA Objectives;
- that this Agreement is given effect in a fair and economical manner; and
- that this Agreement is given effect without undue discrimination between the Parties or any classes of Party.

### 2 THE DCUSA OBJECTIVES ARE DEFINED IN DCUSA CLAUSE 3 AND ARE AS FOLLOWS:

The objectives of this Agreement (such objectives being the General Objectives), except in respect of the Charging Methodologies, shall be:

- the development, maintenance and operation by each of the DNO Parties and IDNO Parties of an efficient, co-ordinated, and economical Distribution System;
- the facilitation of effective competition in the generation and supply of electricity and (so far as is consistent with that) the promotion of such competition in the sale, distribution and purchase of electricity;
- the efficient discharge by each of the DNO Parties and IDNO Parties of the obligations imposed upon them by their Distribution Licences; and
- the promotion of efficiency in the implementation and administration of this Agreement and the arrangements under it; and
- compliance with the Regulation on Cross-Border Exchanges in Electricity and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.

The objectives of this Agreement in respect of the Charging Methodologies only (such objectives being the Charging Objectives) shall be:

- that compliance by each DNO Party with the Charging Methodologies facilitates the discharge by the DNO Party of the obligations imposed on it under the Act and by its Distribution Licence;

- that compliance by each DNO Party with the Charging Methodologies facilitates competition in the generation and supply of electricity and will not restrict, distort, or prevent competition in the transmission or distribution of electricity or in participation in the operation of an Interconnector (as defined in the Distribution Licences);
- that compliance by each DNO Party with the Charging Methodologies results in charges which, so far as is reasonably practicable after taking account of implementation costs, reflect the costs incurred, or reasonably expected to be incurred, by the DNO Party in its Distribution Business;
- that, so far as is consistent with Clauses 3.2.1 to 3.2.3, the Charging Methodologies, so far as is reasonably practicable, properly take account of developments in each DNO Party's Distribution Business; and
- that compliance by each DNO Party with the Charging Methodologies facilitates compliance with the Regulation on Cross-Border Exchanges in Electricity and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.
- that compliance with the Charging Methodologies promotes efficiency in its own implementation and administration.

For the purposes of this Agreement, each of the Charging Methodologies achieves the Charging Objectives if it achieves them in the round, taking each Charging Objective with every other Charging Objective, and having due regard to any particular implications for the determination of the Use of System Charges or connection charges (as applicable) of the DNO Parties (or of any DNO Party) under any other Charging Methodology.