

DCUSA - Key Competition Law 'Dos and Don'ts' for the Panel and Working Groups

DO

- Ensure that the Terms of Reference for all Working Groups refer to the Panel Objectives and to the proper competition law parameters of the function(s) delegated by the Panel.
- 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).
- Draw up and circulate an agenda in advance of all Panel Meetings and Working Group meetings, and ensure that this agenda is respected.
- 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).
- Circulate, or otherwise make available, these 'Key Competition Law Dos and Don'ts' at the start of each Panel Meeting and Working Group meeting, and ensure that this is minuted.
- Terminate a discussion or leave a Panel Meeting or Working Group meeting if you have any competition law concerns, and request that the time and reason for such termination or departure is minuted. Note that mere presence at an anti-competitive discussion is sufficient to be implicated in the infringement.
- Ensure that accurate minutes are taken of all Panel Meetings and Working Group meetings, and of any other discussions with parties. Ensure that these minutes capture the attendees, timing, substance of the discussion and any decisions made.
- Circulate minutes to the Parties. Recommend that attendees retain these minutes, together with the relevant agenda, for their records.
- Seek legal advice if you are in doubt as to the competition law compliance of any matter.
- Consideration should be given as to whether it would be helpful for DCUSA Ltd's lawyers to attend Working Group and Panel meetings where sensitive aspects are to be discussed.

DON'T

- Share information which is of a type not easily available amongst parties and/or is likely to influence competitive behaviour. As a test, consider whether you would be prepared to publish the information in a newspaper.
- 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.

- Under any circumstances, 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.
- Allow conversations between parties to ‘spill over’ into inappropriate areas or be an active or passive participant in inappropriate discussions.
- Allow, encourage or participate in any scheduled or unscheduled ‘shadow’ meetings between parties under the auspices of the Panel and/or any Working Group, i.e. before or after Panel Meetings or Working Group meetings.
- Use language that is ambiguous and unhelpful from a competition law perspective during Panel Meetings, Working Group meetings or when drafting minutes.
- Do anything that seeks to or may have the effect of influencing the conduct of a competitor (other than through your normal commercial activities).
- Fetter your own commercial freedom of action through discussions with parties.
- Collaborate with parties in a way designed to disadvantage particular Parties within a Party Category or particular classes of Party within a Party Category (so, for example, in a way that would disadvantage smaller Suppliers as compared to larger Suppliers).

Appendix A - DCUSA Panel Objectives

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.

The DCUSA Objectives are defined in DCUSA Clause 3 and are as follows:

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

3.1.1 the development, maintenance and operation by each of the DNO Parties and IDNO Parties of an efficient, co-ordinated, and economical Distribution System;

3.1.2 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;

3.1.3 the efficient discharge by each of the DNO Parties and IDNO Parties of the obligations imposed upon them by their Distribution Licences; and

3.1.4 the promotion of efficiency in the implementation and administration of this Agreement and the arrangements under it; and

3.1.5 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.

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

3.2.1 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;

3.2.2 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);

- 3.2.3 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;
 - 3.2.4 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
 - 3.2.5 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.
- 3.3 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.