CDCM - 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.
- 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 competitors. 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 of the CDCM are to be discussed.

DON'T –

- Share information which is of a type not easily available amongst competitors and/or is likely to influence competitive behaviour. As a test, consider whether you would be prepared to publish the information in a newspaper. 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 (noting that the CDCM is only the methodology for calculating distribution 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 competitors 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 competitors 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 your competitors.