
Schedule 6 Non-Price Dispute Resolution Process

1 Objective

- (a) The Undertaking Parties are committed to resolving all Non-Price Disputes proactively, constructively and in a timely and effective manner.
 - (b) The Undertaking Parties will use this Non-Price Dispute Resolution Process to resolve disputes relating to matters other than Price Disputes and disputes regarding berthing decisions and compliance with the Berthing Allocation Rules (which will be resolved in clause 7.1(e)). For the avoidance of doubt, the Non-Price Dispute Resolution Process can be used to resolve disputes regarding the variation or proposed variation of the Berthing Allocation Rules (in accordance with clause 7.2).
 - (c) The Undertaking outlines how the Undertaking Parties will deal with Confidential Information provided by users of the Terminal and Applicants.
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2 Raising a Non-Price Dispute

2.1 Non-Price Dispute Notice

- (a) A Dispute Applicant who wishes to raise a Non-Price Dispute with AAT, MIRRAT, Qube or some combination or all of AAT, MIRRAT and Qube must do so within 6 months after the circumstance giving rise to that Non-Price Dispute by providing written notice (**Non-Price Dispute Notice**) to AAT, Qube and/or MIRRAT (each recipient a **Dispute Respondent**) for the purpose of endeavouring to resolve the Non-Price Dispute.
- (b) The Non-Price Dispute Notice must include details of:
 - (i) the nature of the Non-Price Dispute – including whether the Non-Price Dispute is raised in respect of a single Terminal or more than one Terminal;
 - (ii) the outcome sought by the Dispute Applicant in relation to the Non-Price Dispute; and
 - (iii) the action(s) on the part of the Dispute Respondent(s) which the Dispute Applicant believes will resolve the Non-Price Dispute.
- (c) By lodging a Non-Price Dispute Notice, the Dispute Applicant agrees to comply with this Non-Price Dispute Resolution Process.

2.2 Validity of a Non-Price Dispute Notice

- (a) In circumstances where a Dispute Respondent considers that a Non-Price Dispute Notice does not concern matters that are properly the subject of a Non-Price Dispute Notice, the Dispute Respondent must notify the Approved Independent Auditor within 7 Business Days and the Approved Independent Auditor may:
 - (i) determine whether the matters fall within the proper scope of the subject of a Non-Price Dispute Notice under this Schedule 6; and

- (ii) in making a determination under sub-clause (i), if the Approved Independent Auditor considers it necessary or desirable to do so, he or she may obtain external legal advice from an Australian Senior Counsel or King's Counsel of their choosing who has relevant expertise or experience (which will be shared with the Dispute Respondent(s)) to inform his or her decision.
- (b) Any decision of the Approved Independent Auditor under sub-clause 2.2(a) of this Schedule 6 will be binding on the Dispute Respondents and the Dispute Applicant, subject only to any error of law or unless waived by the ACCC.
- (c) The Approved Independent Auditor may, at its absolute discretion, refuse to accept a Non-Price Dispute Notice, or terminate a Non-Price Dispute, in circumstances where the Approved Independent Auditor determines that:
 - (i) the matters which are the subject of the Non-Price Dispute Notice have already been the subject of an earlier Non-Price Dispute Notice or have otherwise already been determined and require no further consideration; or
 - (ii) the subject matter of the Non-Price Dispute Notice is trivial, vexatious, misconceived, or not made in good faith.
- (d) A person may at any time withdraw a Non-Price Dispute Notice by notifying the Approved Independent Auditor in writing, in which case the Non-Price Dispute will cease.

2.3 Obligation on the Dispute Respondent(s) to engage

- (a) The Dispute Respondent must engage with this Non-Price Dispute Resolution Process unless there is a decision by the Approved Independent Auditor that the Non-Price Dispute is not within the scope of the Non-Price Dispute Resolution Process in accordance with clause 2.2(a).

3 Negotiation

- (a) Subject to sub-clause (b) below, within 7 Business Days of the Dispute Applicant providing the Dispute Respondent(s) a Non-Price Dispute Notice in accordance with clause 20 of the Undertaking, representatives of each party must meet and undertake genuine and good faith negotiations with a view to resolving the Non-Price Dispute expeditiously by joint discussion.
- (b) Where the Dispute Respondent has referred a Non-Price Dispute Notice to the Approved Independent Auditor in accordance with clause 2.2(a), the time for compliance with sub-clause (a) above will be suspended until the Approved Independent Auditor makes a determination. If the Approved Independent Auditor determines that the Non-Price Dispute Notice concerns a matter that is properly the subject of a Non-Price Dispute Notice, then within 7 Business Days of the Approved Independent Auditor's determination, representatives of each party must meet and undertake genuine and good faith negotiations with a view to resolving the Non-Price Dispute expeditiously by joint discussion.
- (c) If the Non-Price Dispute is not resolved in accordance with clause 3(a) or 3(b) within 7 Business Days of the Dispute Applicant and the Dispute Respondent(s) meeting to conduct negotiations then the dispute will be referred to the Approved Independent Auditor for determination in accordance with clause 4.

4 Determination by Approved Independent Auditor

- (a) A Non-Price Dispute referred to under clause 3(c) of this Schedule 6 for determination by the Approved Independent Auditor will be conducted in accordance with the following provisions:
 - (i) the Approved Independent Auditor must act as quickly as a consideration of the Non-Price Dispute allows having regard to the need to properly enquire into and to fairly resolve the Non-Price Dispute;
 - (ii) the Approved Independent Auditor will present its determination of the Non-Price Dispute in draft form to the Dispute Respondent(s) and the Dispute Applicant within 10 Business Days of referral of the Non-Price Dispute Notice to the Approved Independent Auditor and allow them 5 Business Days to comment before making a final determination;
 - (iii) the Approved Independent Auditor will hand down a final determination in writing which includes its reasons for making the determination and findings within 10 Business Days of the expiry of the time provided to the Dispute Respondent(s) and Dispute Applicant to comment on the draft determination; and
 - (iv) subject to any claims for confidentiality over the Approved Independent Auditor's determination (which will be determined by the Approved Independent Auditor), any determination by the Approved Independent Auditor will be made available to the Dispute Applicant (and where they are an industry body, all of their relevant members) and the Dispute Respondents.
- (b) In the event that the Approved Independent Auditor, acting reasonably, determines that an extension of time is necessary in order to make a determination in respect of the Non-Price Dispute, they must notify the Dispute Applicant, the Dispute Respondent(s), and the ACCC of:
 - (i) the further period required; and
 - (ii) the reasons justifying the required extension of time.
- (c) In deciding a Non-Price Dispute, the Approved Independent Auditor will have regard to the objectives of the Undertaking set out in clause 2.4 of the Undertaking and may have regard to any other matters that he or she thinks are relevant.
- (d) In deciding a Non-Price Dispute, the Approved Independent Auditor must not, without the consent of the Dispute Respondent(s) and the Dispute Applicant:
 - (i) make a determination which relates to matters which were not specified in the Non-Price Dispute Notice; or
 - (ii) allow any other party to join or intervene in the adjudication process.
- (e) Subject to sub-clause 4(d), the Approved Independent Auditor may make any determination or direction in relation to the Non-Price Dispute that he or she considers appropriate, including as to the process by which the Non-Price Dispute is to be undertaken.

- (f) If a Dispute Applicant does not comply with a determination or direction of the Approved Independent Auditor, the Dispute Respondent(s) will not be obliged to continue to seek to resolve the matters subject of the Non-Price Dispute Notice.
- (g) The Dispute Respondent(s) will comply with the lawful determination or direction of the Approved Independent Auditor.
- (h) The Approved Independent Auditor's costs and the costs of the parties to the Non-Price Dispute will be borne by the Dispute Respondent(s) and the Dispute Applicant in such proportions as the Approved Independent Auditor determines. The Dispute Respondent(s) and the Dispute Applicant may make submissions to the Approved Independent Auditor on the issue of costs at any time prior to the Approved Independent Auditor's costs determination.
- (i) The Dispute Respondent(s) and the Dispute Applicant will indemnify the Approved Independent Auditor from any claims made against the Approved Independent Auditor arising in connection with the performance by the Approved Independent Auditor of their duties under this clause 4, such indemnity excluding circumstances where the conduct of the Approved Independent Auditor constitutes negligence (whether wilful or otherwise), dishonest or unlawful conduct.
- (j) The Approved Independent Auditor must include a copy of their determination with the next Audit Report.
- (k) The Approved Independent Auditor must notify the ACCC of the outcome of the Non-Price Dispute.

5 Definitions

In this Schedule 6, the following meanings will apply (unless the context otherwise indicates):

AAT has the meaning given in the Undertaking.

ACCC has the meaning given in the Undertaking.

Applicant has the meaning given in the Undertaking.

Approved Independent Auditor has the meaning given in the Undertaking.

Audit Report has the meaning given in the Undertaking.

Berthing Allocation Rules has the meaning given in the Undertaking.

Business Day has the meaning given in the Undertaking.

Confidential Information has the meaning given in the Undertaking.

Dispute Applicant has the meaning given in the Undertaking.

Dispute Respondent has the meaning given in clause 2.1(a) of this Schedule 6.

MIRRAT has the meaning given in the Undertaking.

Non-Price Dispute has the meaning given in the Undertaking.

Non-Price Dispute Notice has the meaning given in clause 2.1(a) of this Schedule 6.

Non-Price Dispute Resolution Process has the meaning given in the Undertaking.

Price Dispute has the meaning given in the Undertaking.

Qube has the meaning given in the Undertaking.

Terminal(s) has the meaning given in the Undertaking.

Undertaking is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

Undertaking Parties has the meaning given in the Undertaking.