
Schedule 5 Price Dispute Resolution Process

This Price Dispute Resolution Process is intended to resolve disputes relating to the Charges levied by the Terminal Operator for the supply of Access Services at any of the Terminals and the introduction of new fees, charges, tariffs, or duties (however so described).

Non-Price Disputes are not governed by this process.

AAT and MIRRAT have committed to the ACCC (through the Undertaking) to comply with the obligations in clause 5 of the Undertaking and the Open Access Conditions in the performance of its obligations under this Price Dispute Resolution Process.

1 Objective

- (a) The Terminal Operator publishes on its website a rate card that separately identifies the Charges the subject of this Undertaking from any fees, charges tariffs or duties (however so described) levied by the Terminal Operator that are not Charges for each of the Terminals.
- (b) The Terminal Operator will use this Price Dispute Resolution Process to notify any Change to Charges and resolve disputes relating to the Charges the Terminal Operator levies or will levy for Access Services.
- (c) The Undertaking outlines how the Terminal Operator will deal with Confidential Information provided by users of the Terminals.

2 Annual price review

2.1 Review of Charges

Each Terminal Operator will conduct an annual review of its Charges and may propose a Change which it considers reasonable and appropriate, taking into account the relevant considerations in clause 3.4, and provided that the Terminal Operator complies with its obligations under any Terminal Licence in respect of that Change (to the extent that those obligations are not inconsistent with the terms of the Undertaking).

2.2 Notice of Charges and any Changes

On or before 3 March each year, each Terminal Operator will provide notice of the proposed Charges for each Terminal applicable for the next Financial Year in accordance with clause 5 of Schedule 1 by:

- (a) publishing a proposed rate card that separately identifies the Charges the subject of this Undertaking from the fees, charges, tariffs or duties (however so described) levied by the Terminal Operator that are not Charges;
- (b) giving written notice to any person who has entered into an Access Licence Agreement at the Terminal, and to any person who has informed the Terminal Operator in writing that it wishes to be notified of the Charges or a Change to a Charge in respect of that Terminal;
- (c) publishing information about this Price Dispute Resolution Process (including that a Price Dispute can be raised in accordance with clause 3 of this Schedule 5) on its website; and

- (d) giving written notice to the Independent Price Expert.

2.3 Information about Changes to Charges

A notice provided under clause 2.2(a) must:

- (a) specify the amount of the proposed Charges including identifying any Changes that are proposed to be made to the Charges;
- (b) identify any new fees, charges, tariffs or duties (however so described) that the Terminal Operator considers not to be Charges and an explanation why these new fees, charges, tariffs or duties are, or are not considered to be Charges;
- (c) state the date on which the proposed Changes to Charges will take effect (if no such date is specified, the Changes to Charges will be deemed to take effect from 1 July in accordance with clause 4.1(b) of this Schedule 5);
- (d) contain detailed reasons for any proposed Change to the Charges including identification of all Changes and detailed reasons for each Change;
- (e) contain information about this Price Dispute Resolution Process (including that a Price Dispute can be raised in accordance with clause 3 of this Schedule 5 in relation to a Change to a Charge); and
- (f) contain the name and contact details of the Independent Price Expert.

2.4 Offer to negotiate

The Terminal Operator(s) will offer to negotiate with any Dispute Applicant who provides or proposes to provide an Objection Notice in relation to a Change to a Charge notified under clause 2.2.

2.5 Approved Changes and existing Charges

- (a) A Price Dispute can be raised under clause 3.1 in respect of:
 - (i) a Change to a Charge; or
 - (ii) the proposed designation of a new fee, charge, tariff or duty (however so described) as not a Charge that is the subject of this Undertaking; or
 - (iii) any change made to a fee, charge, tariff or duty (however so described) which involves a change in the party on whom it is levied, or the circumstances in which it is otherwise payable, and as a consequence of which it becomes a Charge.
- (b) A Price Dispute cannot be raised under clause 3.1 in respect of:
 - (i) any Charge as specified on a rate card in respect of any of Port Kembla Terminal, Brisbane Terminal or Appleton Dock published as at the Control Date;
 - (ii) a proposed Change to a Charge of which notice has been given in accordance with clause 2.2 and which discloses that the Change has been approved or determined by the Independent Price Expert pursuant to clause 3.3;

- (iii) an existing Charge that the Terminal Operator is not proposing to Change; or
- (iv) an existing fee, charge, tariff or duty (however so described) that has not been identified as a Charge and is not a new fee, charge, tariff or duty that the Terminal Operator proposes to introduce (in accordance with clause 2.3(b)).

3 Price disputes

3.1 Raising a price dispute

- (a) If a Dispute Applicant objects to:
 - (i) a proposed Change to a Charge; or
 - (ii) the proposed designation of a new fee, charge, tariff or duty (however so described) as not a Charge that is the subject of this Undertaking,

in respect of which the Dispute Applicant has a genuine direct or indirect economic interest, it may raise a Price Dispute in respect of that relevant Charge or new fee, charge, tariff or duty by providing written notice to the Independent Price Expert and the Terminal Operator(s) by no later than 24 March of the relevant year (**Objection Notice**).
- (b) An Objection Notice must set out:
 - (i) the Charge(s) the relevant Terminal Operator proposes to Change in respect of which the dispute is raised or the new tariff(s) it proposes to implement;
 - (ii) for each of the disputed Charges or tariffs that the Terminal Operator proposes to Change, the genuine economic interest that the Dispute Applicant claims it holds in respect of that new tariff or Charge (or those Charges); and
 - (iii) the Dispute Applicant's reasons for:
 - (A) objecting to the Charge the Terminal Operator proposes to Change; or
 - (B) why the new fee, charge, tariff or duty (however so described) is a Charge.
- (c) A Dispute Applicant must provide a copy of the Objection Notice to the ACCC at the same time as it is provided under clause 3.1(a) to the Independent Price Expert and the Terminal Operator.
- (d) By submitting an Objection Notice, the Dispute Applicant agrees to comply with this Price Dispute Resolution Process.
- (e) A Dispute Applicant may at any time withdraw an Objection Notice by written notice to the Terminal Operator, the Independent Price Expert and the ACCC, in which case the powers and authority of the Independent Price Expert to make a determination of that Objection Notice under clause 3.3 cease.

3.2 Publication of Objection Notice

The Terminal Operator will publish a copy of the Objection Notice on its website within 5 days of receipt of the Objection Notice.

3.3 Independent Price Expert Determination

- (a) Where the Independent Price Expert has received an Objection Notice in relation to a Charge, the Independent Price Expert:
 - (i) will determine whether the Dispute Applicant holds a genuine direct or indirect economic interest in the disputed Charge that the Terminal Operator proposes to Change;
 - (ii) will determine whether the Terminal Operator's proposed Change:
 - (A) is reasonable and appropriate having regard to the principles listed in clause 3.4; and
 - (B) complies with the Terminal Operator's obligations under any Terminal Licence applicable to the relevant Terminal (to the extent that those obligations are not inconsistent with the terms of the Undertaking); and
 - (iii) may accept, reject or vary the Terminal Operator's proposed Change to the relevant Charge or Changes.
- (b) Where the Independent Price Expert has received an Objection Notice in relation to a new fee, charge, tariff or duty (however so described) that has not been designated as a Charge, the Independent Price Expert:
 - (i) will determine whether the Dispute Applicant holds a genuine direct or indirect economic interest in the disputed new fee, charge, tariff or duty that the Terminal Operator proposes to not designate as a Charge; and
 - (ii) will determine whether the new fee, charge, tariff or duty should be designated as a Charge by determining whether it meets the requirements of a Charge as defined in this Undertaking; and
 - (iii) if the Independent Price Expert determines that the new fee, charge, tariff or duty should be designated as a Charge on the basis that it meets the requirements of the definition of a Charge, the Independent Price Expert can also and as part of the same dispute determine whether the Charge is reasonable and appropriate in accordance with clause 3.3(a).
- (c) Any variation of a Charge by the Independent Price Expert under clause 3.3(a) will not result in a Charge that is:
 - (i) higher than the Change to the Charges proposed by the Terminal Operator under clause 2.2; or
 - (ii) less than the then current Charges to the extent the Charge is already being levied by the Terminal Operator.
- (d) The Independent Price Expert will provide a copy of his or her determination and supporting reasons (including any modelling or quantification relied on in his or her

determination) subject to any confidentiality claims, to the Terminal Operator, the Dispute Applicant and the ACCC by 31 May each year.

- (e) In the event that the Independent Price Expert, acting reasonably, determines that an extension of time is necessary in order to make a determination in respect of the Price Dispute, they must notify each of the Terminal Operator, the Dispute Applicant and the ACCC of:
 - (i) the further period required, provided that this does not result in a determination being provided any later than 15 June in any year; and
 - (ii) the reasons justifying the required extension of time.
- (f) The Terminal Operator and the Dispute Applicant must provide the Independent Price Expert with any information he or she requires to make a determination under this clause 3.3, within a timeframe reasonably determined by the Independent Price Expert.
- (g) In the event that more than one Objection Notice is received in relation to a proposed Change to a Charge or a proposed new fee, charge, tariff or duty (however so described) that has not been designated as a Charge, the Independent Price Expert will make a single determination about that Charge or new fee, charge, tariff or duty.
- (h) The Independent Price Expert's decision is final and binding.
- (i) When making a determination under this clause 3.3, the Independent Price Expert is acting as an expert and not as an arbitrator.
- (j) In circumstances where the Terminal Operator considers that an Objection Notice does not concern matters that are properly the subject of an Objection Notice, the Independent Price Expert may:
 - (i) determine whether the matters fall within the proper scope of the subject of an Objection Notice under this Schedule 5; and
 - (ii) in making a determination under sub-clause (i), if the Independent Price Expert 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 his or her choosing who has relevant expertise or experience (which will be shared with the Terminal Operator) to inform his or her decision.
- (k) Any decision of the Independent Price Expert under sub-clause (j) will be binding on the Terminal Operator and the parties who submitted the Objection Notice, subject only to any error of law or unless waived by the ACCC.

3.4 Relevant considerations

In determining whether a Change to a Charge is reasonable and appropriate, the Independent Price Expert will have regard to the following principles:

- (a) that Charges should:
 - (i) be set so as to generate expected revenue for Access Services that is at least sufficient to meet the efficient costs of providing the Access Services;

- (ii) include a reasonable rate of return on the amount of funds invested commensurate with the commercial risks involved; and
 - (iii) in the case of Webb Dock West, also comply with the requirements in clause 3.5.
- (b) that Charges should be set taking into account:
 - (i) Terminal lease costs and all efficient input costs;
 - (ii) an appropriate allocation of AAT's relevant overhead costs;
 - (iii) reasonably expected volumes over the period used to calculate the proposed increase in the Charge including where appropriate, any split between committed / uncommitted volume and associated risks;
 - (iv) depreciation of, and a return on, the prudent level of capital invested by a Terminal Operator at the Terminal, where:
 - (A) depreciation is based on a reasonable depreciation methodology and reasonably anticipated asset lives;
 - (B) the rate of return is a reasonable rate of return commensurate with the commercial risks involved including having regard, without limitation, to AAT's weighted average cost of capital; and
 - (C) the prudent level of capital must not include any investments or proposed investments which arise or are proposed after the Commencement Date at the Terminal that disproportionately benefit a Qube Entity based on their actual or likely use of the Terminal (for clarity, investments will not disproportionately benefit a Qube Entity where costs are allocated, and relevant charges are determined, on a basis that allocates the cost of that investment based on usage of the relevant assets);
 - (v) the interests of all users for which the proposed Charges relates, including the extent to which the proposed Charges reflect actual or likely use of the Terminal by different users, including use of facilities and equipment;
 - (vi) the reasonableness and appropriateness of, and justification for, the existing Charges for the supply of the Access Services;
 - (vii) whether any Change is consistent with CPI Inflation; and
 - (viii) where applicable, any additional pricing principles and conditions imposed under a Terminal Licence, to the extent that those pricing principles and conditions are not inconsistent with the terms of the Undertaking and in particular this clause 3.4.

3.5 Pricing commitments following the MIRRAT Acquisition

In respect of Webb Dock West:

- (a) Charges as at the date of completion of the MIRRAT Acquisition ('**day 1 prices**') will reflect those tariffs levied by MIRRAT for substantially the same Access Services immediately prior to the Control Date (unless otherwise approved by the ACCC);

- (b) where a fee, charge, tariff or duty (however so described) forms part of day 1 prices, a Dispute Applicant can dispute the designation made by MIRRAT of that tariff, fee, charge or duty as being a Charge, or as not being a Charge, in the first rate card published following the Control Date, in accordance with the process set out in clause 3; and
- (c) following the MIRRAT Acquisition, any Change in Charges proposed by AAT for Webb Dock West under this Schedule 5 will be taken to be reasonable and appropriate provided that such Change in Charges must be set so as to generate expected revenue for Access Services that is at least sufficient to meet:
 - (i) any increase during the relevant period in the efficient costs of providing the Access Services as contemplated by clause 3.4(a)(i); and/or
 - (ii) any reasonably expected reduction of volumes for Access Services over the period used to calculate the proposed Change to the Charges, including where appropriate any split between committed / uncommitted volume and associated risks,

inclusive of a reasonable rate of return in accordance with clause 3.4(a)(ii).

- (d) if completion of the MIRRAT Acquisition occurs before 1 July 2025 and MIRRAT has, prior to the date of completion of that acquisition, proposed an amendment or increase to a Reference Tariff (as defined in the MIRRAT Undertaking) to take effect from 1 July 2025 (**Proposed MIRRAT Change**), the Terminal Operator may only implement the Proposed MIRRAT Change if:
 - (i) the Terminal Operator has designated whether the Reference Tariff is a Charge;
 - (ii) for Reference Tariffs which are designated as Charges, the Terminal Operator has issued a notice, which complies with the requirements of clause 2.3 of this Schedule 5 in respect of the Proposed MIRRAT Change (except in respect of the date required for notification under that clause);
 - (iii) the Terminal Operator has provided any Dispute Applicant with a period of 15 business days to indicate whether they propose to object to the Proposed MIRRAT Change, which may include disputing the designation by the Terminal Operator under sub-paragraph (i) above.
- (e) For the purposes of sub-clause (d) above, if a Dispute Applicant submits an Objection Notice in respect of the Proposed MIRRAT Change, the requirements in this Schedule 5 apply to that dispute. In determining whether to accept, reject or vary the Proposed MIRRAT Change, the Independent Price Expert must have regard to the matters set out in clauses 3.4 and 3.5 of this Schedule 5 as applicable to Webb Dock West.
- (f) If completion of the MIRRAT Acquisition occurs after 1 July 2025, the Terminal Operator may only implement a Proposed MIRRAT Change if MIRRAT has followed the process set out in the MIRRAT Undertaking for amending or increasing Reference Tariffs (as defined in the MIRRAT Undertaking). If any price dispute has been raised under the MIRRAT Undertaking but has not been finalised by the date of completion of the MIRRAT Acquisition, the Terminal Operator must not implement the Proposed MIRRAT Change.

- (g) For clarity, an Objection Notice cannot dispute the reasonableness or appropriateness of the quantum of day 1 prices, except in respect of a Proposed MIRRAT Change.

In respect of Port Kembla Terminal, Brisbane Terminal and Appleton Dock:

- (h) A Dispute Applicant can dispute the designation made by AAT of a tariff, fee, charge or duty as being a Charge, or as not being a Charge, in the first rate card published following the Control Date, in accordance with the process set out in clause 3.

3.6 Notice and publication of decision

- (a) The Independent Price Expert must notify:
 - (i) the Terminal Operator; and
 - (ii) any party that lodged an Objection Notice,

of his or her determination under clause 3.3(a)(iii) as soon as practicable after making the determination.
- (b) Within 2 Business Days of receiving the determination, the Terminal Operator must:
 - (i) publish the Independent Price Expert's determination on its website; and
 - (ii) provide a copy of the Independent Price Expert's determination to the Approved Independent Auditor.
- (c) The cost of the expert determination will be shared equally between the Terminal Operator and the Dispute Applicant, unless the Independent Price Expert determines, or the parties agree otherwise.
- (d) The Terminal Operator and the Dispute Applicant will execute a deed to indemnify the Independent Price Expert against any loss or damage incurred by the Independent Price Expert in the course of carrying out his or her functions in accordance with his or her terms of appointment.

4 Date Change or new tariff takes effect

4.1 Changes to Charges

- (a) In the absence of any Objection Notice submitted under clause 3.1 in relation to a Change to a specific Charge or Charges, the Change to the Charge takes effect from the date that the Terminal Operator notified under clause 2.2(a) that the proposed Change would take effect.
- (b) Unless otherwise specified by the Terminal Operator in the notice issued under clause 2.2(a), any Changes to Charges approved or determined by the Independent Price Expert under this Schedule 5 will take effect from 1 July and will apply in respect of that Financial Year.
- (c) For the avoidance of doubt, if an Objection Notice submitted under clause 3.1 relates to a specified Charge, the Terminal Operator may implement any Changes

proposed to Charges that are not the subject of the Objection Notice in accordance with clause 4.1(a) above.

4.2 New tariffs that are not designated as a Charge

- (a) In the absence of any Objection Notice submitted under clause 3.1 in relation to a new fee, charge, tariff or duty (however so described) that the Terminal Operator proposes to not designate as a Charge, the new fee, charge, tariff or duty takes effect from the date that the Terminal Operator notified under clause 2.2(a) that the proposed new tariff, fee, charge or duty would take effect.
- (b) Unless otherwise specified by the Terminal Operator in the notice issued under clause 2.2(a), any new fee, charge, tariff or duty (however so described) approved or determined by the Independent Price Expert to not be a Charge under this Schedule 5 will take effect from 1 July and will apply in respect of that Financial Year.
- (c) For the avoidance of doubt, if an Objection Notice submitted under clause 3.1 relates to a specified new fee, charge, tariff or duty (however so described), the Terminal Operator may implement any other new tariffs, fees, charges or duties that are not the subject of the Objection Notice in accordance with clause 4.1(a) above.

4.3 New tariffs or Changes to Charges that are the subject of an Objection Notice

- (a) The Change to a Charge or introduction of a new fee, charge, tariff or duty (however so described) that is the subject of an Objection Notice cannot be implemented or levied by the Terminal Operator until the Independent Price Expert makes a determination in accordance with clause 3.6(a) above.
- (b) The Terminal Operator may only implement or levy the Change to the Charge or the new fee, charge, tariff or duty (however so described) following notice and publication of the Independent Price Expert's determination and no earlier than 1 July of the relevant year.
- (c) The Terminal Operator is not permitted to backdate any Changes to Charges or new fees, charges, tariffs or duties that are the subject of an Objection Notice that has not been determined by the Independent Price Expert as at 1 July of the relevant year.

4.4 Reimbursement of any overpayment of Charges

- (a) Where the Independent Price Expert determines that there has been an overpayment resulting from payments made by a Service Provider of a Charge prior to determination of a Price Dispute, the Independent Price Expert may direct the Terminal Operator to reimburse any affected Service Providers the amount of that historical overpayment within 15 Business Days. For the avoidance of doubt, the Approved Independent Auditor may consider complaints regarding the Terminal Operator's compliance with this clause.

5 Definitions

In this Schedule 5, 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.

Access Licence Agreement has the meaning given in the Undertaking.

Access Services has the meaning given in the Undertaking.

Approved Independent Auditor has the meaning given in the Undertaking.

Business Day has the meaning given in the Undertaking.

Change(s) means any of the following:

- (b) a new Charge the Terminal Operator proposes to introduce;
- (c) an increase to an existing Charge; or
- (d) a variation to the methodology used to levy, calculate or apply a Charge.

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

Commencement Date has the meaning given the Undertaking.

Confidential Information has the meaning given in the Undertaking.

CPI Inflation means the percentage change in the Consumer Price Index (All Groups) for the weighted average of Australia's eight capital cities as published by the Australian Bureau of Statistics (ABS 6401.0) over the twelve months up to the December Quarter immediately prior to the commencement of the relevant financial year.

Dispute Applicant has the meaning given in the Undertaking.

Financial Year means a financial year ending 30 June.

Independent Price Expert has the meaning given in the Undertaking.

MIRRAT has the meaning given in the Undertaking.

MIRRAT Acquisition has the meaning given in the Undertaking.

Objection Notice has the meaning given in clause 3.1(a) of this Schedule 5.

Open Access Conditions has the meaning given in the Undertaking.

Price Dispute has the meaning given in the Undertaking.

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

Proposed MIRRAT Change has the meaning given in clause 3.5(d) of this Schedule 5.

Qube Entity or Qube Entities has the meaning given in the Undertaking.

Service Provider has the meaning given in the Undertaking.

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

Terminal Licence has the meaning given in the Undertaking.

Terminal Operator(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.

Webb Dock West has the meaning given in the Undertaking.