

Annex 5a: Terms of reference of the Enforcement (Settlement) Committee – Competition Act 1998

Updated: March 2022

1. Purpose

To decide whether to authorise a decision to follow a settlement procedure in respect of an investigation under the Competition Act 1998 (“CA 98”) in the circumstances referred to in Rule 9(1) of the Competition Act 1998 (Competition and Markets Authority’s Rules) Order 2014 (the “CMA Rules”) and, where applicable, to perform the functions of a “different relevant person” for the purposes of Rule 9(2) of the CMA Rules (“Authorisation Decisions”).

2. Duties

To consider all matters relevant to making Authorisation Decisions

The matters referred to in paragraph 2.1 above shall include, but not be limited to, relevant guidance of the Authority or the Competition and Markets Authority.

3. Membership and attendance

The Enforcement (Settlement) Committee – Competition Act 1998 (“the Committee”) shall have a membership of three and shall be constituted when required in relation to a specific investigation.

Two members of the Committee shall be members of the Enforcement Decision Panel (“EDP”). Those members shall be nominated by the Chair of the EDP. The Chair of the EDP shall additionally nominate one of those two members to act as Chair of the Committee. The other member of the Committee shall be the Director responsible for enforcement (the “Director”) or a member of Ofgem staff at Senior Civil Service (“SCS”) level (or equivalent) (“SCS member”).

Authorisation Decisions may only be taken when the Committee is in quorum. All three members are required to be present in order for any meeting of the Committee to be quorate. In exceptional circumstances the two members of the Committee present may resolve the Committee to be quorate where there is only one EDP member present and one SCS member present in order to allow Authorisation Decisions to be progressed

(e.g. where a nominated member of the EDP is not present through incapacity). The fact and reason for any such decision must be recorded and reported in the EDP annual report. All Authorisation Decisions of the Committee must be achieved by majority vote. Where the Committee proceeds with a quorum of two, the EDP member will have a deciding vote if there is deadlock.

4. Meetings

The Committee shall meet as and when required.

5. Authority

The Committee is authorised by the Authority in respect of the investigation referred to

Annex 5b: Terms of reference of the Enforcement (Settlement) Committee – Relevant Conditions, Relevant Requirements, Statutory Obligations, Consumer Protection Legislation

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it in accordance with these Terms of Reference to make Authorisation Decisions.

1. Purpose

To consider whether to authorise settlement agreements in respect of alleged contraventions and reach a decision using the powers under Sections 25 and 27A, 27G and 27H of the Electricity Act 1989 and/or under Sections 28, 30A, 30G and 30H of the Gas Act 1986 and/or under regulations 23, 24, 25, 26, 30, 31, 38 of the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013.

2. Duties

The duty of the Enforcement (Settlement) Committee (“the Committee”) is to consider the possibility of settlement in respect of any relevant matter referred to it and to reach a decision as to whether to take action under Sections 25, 27A, 27G and 27H of the Electricity Act 1989 and/or under Sections 28, 30A, 30G and 30H of the Gas Act 1986 and/or under regulations 23, 24, 25, 26, 30, 31, 38 of the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013, and if so what action to take.

As provided for in an ordinary resolution of the Gas and Electricity Markets Authority dated 9 March 2022, the Director responsible for enforcement (the "Director") or a nominated alternate (being an employee of Ofgem at Director level or equivalent) may make decisions in any of the matters set out above for the purposes of achieving settlement of those matters where that would be appropriate. Those matters will not be referred to a Committee to consider settlement unless the Director (or the nominated alternate) considers it appropriate, at any stage, to do so.

3. Membership and Attendance

The Committee shall have a membership of three, of whom two shall be members of the EDP. The EDP members shall be nominated by the Chair of the EDP. The Chair of the EDP shall additionally nominate one of those two members to act as Chair of the Committee. The other member of the Committee shall be the Director responsible for enforcement or a member of Ofgem staff at Senior Civil Service ("SCS") level (or equivalent) ("SCS member"). Decisions may only be taken when the Committee is in quorum. All three members are required to be present in order for any meeting of the Committee to be quorate. In exceptional circumstances the two members of the Committee present may resolve the Committee to be quorate where there is only one EDP member present and one SCS member present in order to allow decisions to be progressed (e.g. where a nominated member of the EDP is not present through incapacity). The fact and reason for any such decision must be recorded and reported in the EDP annual report. Any decision of the Committee must be achieved by majority vote. Where the Committee proceeds with a quorum of two, the EDP member will have a deciding vote if there is deadlock.

4. Meetings

The Committee shall meet as and when required.

5. Authority

Each Committee is authorised by the Authority in respect of the particular case referred to it to consider the matter referred to it and has delegated authority to make a decision as to any action under the powers under Sections 25, 27A, 27G and 27H of the Electricity Act 1989 and/or under Sections 28, 30A, 30G and to 30H of the Gas Act 1986 and/or under regulations 23, 24, 25, 26, 30, 31, 38 of the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013 acting in accordance with any published guidelines of the Authority on such matters.

