

CHARTER FOR GLOBAL DAIRY TRADE
ADVISORY OVERSIGHT BOARD AND RULINGS
PANEL

VERSION ~~ONE~~ - 14 MARCH 2012 TWO - XX NOVEMBER 2015

GlobalDairyTrade Advisory Charter for Oversight Board Charter and Rulings Panel

1. OBJECTIVE AND ROLE

- 1.1 The objective and the role of the Advisory Oversight Board are as set out in the Rules. ~~Such objective and role as at the date of this Charter is set out in Appendix One.~~
- 1.2 The Members will carry out the objective and the role of the Advisory Oversight Board in accordance with the Rules and this Charter.
- 1.3 GlobalDairyTrade is the market administrator pursuant to Rule B4.1. This role involves compiling and distributing certain Participant-related information under the Rules and carrying out certain other functions specified in the Rules including the monitoring of, and publicly commenting on, Trading Platform outcomes and providing secretarial functions in respect of ~~this Advisory~~ the Oversight Board and the Rulings Panel. In particular, GlobalDairyTrade will provide notifications to the Advisory Oversight Board pursuant to Rule B4.6.

2. APPOINTMENT OF MEMBERS

2.1 Membership and Appointment: ~~The Oversight Board will comprised the following Members:~~

- (a) ~~up to five Members that are Sellers, appointed by GlobalDairyTrade may appoint in accordance with Appendix One;~~
- (b) ~~up to five Members to the Advisory Board from time to time. It is anticipated that are Bidders, appointed by GlobalDairyTrade in accordance with Appendix Two;~~
- (c) ~~up to three Members predominantly will be Participants, or that are representatives of Participants. Once a Member has accepted an the parties that operate, or participate in, the Relevant Financial Markets, appointed from time to time by GlobalDairyTrade, having regard to the guidelines for appointment set out in Appendix Three; and provided~~
- (d) ~~the letter provided for in Chairperson appointed in accordance with clause 2.8, such appointment will be notified~~⁷.

2.12.2 Initial Members: ~~The initial Members of the Oversight Board are those persons listed on the Information Website, each of whom is deemed to have been appointed in accordance with this Charter ("Initial Members").~~

~~2.2 **Initial Members:** the first five Sellers on the Trading Platform will be appointed as Members for a term of 2 years. However, if such a Seller is a group of associated businesses, GlobalDairyTrade may, in its absolute discretion acting in good faith and in a manner that is consistent with the objective and role of the Advisory Board, appoint one or more of that Seller's associated businesses as a Member instead of, or as well as, appointing that Seller as a Member.~~

~~2.3 **Further Members:** GlobalDairyTrade may, acting in good faith and in a manner that is consistent with the objective and role of the Advisory Board, also appoint the following additional Members from time to time:~~

~~(a) any Bidder, any representative of any Bidder(s), any Seller, or any representative of any Seller(s). For the avoidance of doubt, if a Seller is a group of associated businesses, GlobalDairyTrade may, in its absolute discretion acting in good faith and in a manner that is consistent with the objective and role of the Advisory Board, appoint one or more of that Seller's associated companies as a Member; and/or~~

~~(b) an independent third party, who is not a representative of any Seller or Bidder, that GlobalDairyTrade considers has relevant knowledge and expertise to assist in achieving the objective and role of the Advisory Board (an "**Independent Member**").~~

~~2.4 **Bidder Representative Members:** Pursuant to clause 2.3(a), it is anticipated that GlobalDairyTrade will in due course, acting in good faith and in a manner that is consistent with the objective and role of the Advisory Board, appoint a Bidder(s), or a representative of a Bidder(s), to the Advisory Board to represent the interests of Bidders generally.~~

2.52.3 **Member Representatives:** Members (other than the Chairperson) will, by notice to GlobalDairyTrade, appoint, from time to time, a Representative to attend meetings of the AdvisoryOversight Board and participate in meetings on their behalf. A Representative:

(a) may be removed and replaced by the appointing Member at any time, by notice to GlobalDairyTrade; and

(b) must, in fulfilling his/her AdvisoryOversight Board role, observe all Member obligations included in this Charter as if he/she is a Member.

2.62.4 **Best Interests:** All Members shall, in fulfilling their AdvisoryOversight Board role, act in a manner that they believe to be consistent with the objective and role of the AdvisoryOversight Board, as set out in clause 1.1, and may only take into account the interests of an individual Member where they consider those interests are consistent with the objective and role of the AdvisoryOversight Board. Notwithstanding the immediately preceding sentence, nothing in this Charter shall require a Member to act in a manner contrary to its own interests or a Representative to act in a manner contrary to the interests of its appointing Member.

2.72.5 **Term:** The term of appointment of each of the Initial Members shall be is listed on the Information Website. Any Members that are subsequently appointed or reappointed (as

the case may be) to the ~~Advisory~~Oversight Board shall hold such membership for a term of 2 years. A Member who is qualified to remain a Member under the provisions of this Charter shall be eligible for reappointment as a Member at the expiry of such term.

2-82.6 Acknowledgement letter: ~~Newly~~ All Members appointed to the Oversight Board subsequently to the Initial Members must provide a signed letter to GlobalDairyTrade, in a form approved by GlobalDairyTrade, acknowledging that they will, and they will procure that their Representatives will, comply with this Charter before they may perform any role or function as a Member. Once a Member has been appointed and provided such a letter, the appointment of that Member will be notified on the Information Website.

3. REMOVAL OF MEMBERS

3.1 Removal: GlobalDairyTrade:

(a) _____ may remove ~~Members~~or suspend a Member of the Seller Group or the Bidder Group from time to time by notification on the Information Website and to the Oversight Board where ~~at~~the Member has been appointed pursuant to clause ~~2-2 or 2.3(a)~~ and ~~the Member~~ 2.1 and that Member:

~~(a)(i)~~ _____ is no longer a Seller or Bidder on the Trading Platform; ~~(as applicable);~~
or

(ii) _____ has been suspended by GlobalDairyTrade from one or more Trading Events in accordance with Rule A5.5;

(b) _____ may remove ~~Members~~or suspend a Member of the Finance Group from time to time by notification on the Information Website and to the Oversight Board, including in circumstances where the Member of the Finance Group no longer meets the guidelines for appointment set out in Appendix Three;

~~(b)(c)~~ _____ may remove or suspend a Member from time to time by notification on the Information Website and to the Oversight Board where the Member has been appointed pursuant to clause ~~2-2, or 2.3~~2.1, and GlobalDairyTrade determines, in its sole discretion, acting in good faith and in a manner that is consistent with the objective and role of the ~~Advisory~~Oversight Board, to remove that Member; (including on account of that Member (or the Representative of that Member) failing to attend three consecutive meetings of the Oversight Board); and

~~(c)(d)~~ _____ must immediately remove a Member by notification on the Information Website and to the Oversight Board where that Member requests that it be removed.

4. MEETINGS OF ADVISORY BOARD OVERSIGHT BOARD

4.1 **Annual meeting:** The Advisory Oversight Board shall hold an annual meeting of Members at least once every calendar year. The annual meeting shall be called by GlobalDairyTrade.

4.2 **Special meetings:** A special meeting of the Advisory Oversight Board may be called by:

- (a) GlobalDairyTrade at any time; or
- (b) a Member at any time by the Member requesting GlobalDairyTrade to call a special meeting. GlobalDairyTrade must call a meeting within 20 Working Days of such a request.

4.3 **Time and place of meetings:** Each meeting of the Advisory Oversight Board shall be held at such time and place as GlobalDairyTrade determines.

4.4 **Other attendees at meetings:** A representative of each of GlobalDairyTrade ~~and/or~~ the Trading Manager and/or any other invitee of GlobalDairyTrade may attend any meeting of the Advisory Oversight Board ("**Operational Attendees**") and may provide comments or information at any meeting that each respective Operational Attendee considers, acting in good faith and in a manner that is consistent with the objective and role of the Advisory Oversight Board, assists the functioning of the Advisory Oversight Board.

4.5 **Forms of meeting:** A meeting of the Advisory Oversight Board may be held either:

- (a) by a number of the Members who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all Members participating and constituting a quorum can simultaneously hear each other throughout the meeting.

4.6 **Procedure:** Except as provided in this Charter, the Advisory Oversight Board may regulate its own procedure.

5. NOTIFICATIONS

~~5.1 **Update Notices:** Pursuant to Rule B4.6, GlobalDairyTrade will provide written notification to Members ("**Update Notices**"), as soon as practicable:~~

- ~~(a) before it formulates any significant Rule change proposal (and in any event before commencing public consultation);~~

- ~~(b) — before new generic Product types are offered for sale on the Trading Platform;~~
- ~~(c) — of the compliance plans, confidential information protocols, or similar matters, adopted by GlobalDairyTrade pursuant to Rule B4.3 and any material changes to such documentation;~~
- ~~(d) — the appointment and terms of reference of the independent person pursuant to Rule B4.3 and any reports issued by such person;~~
- ~~(e) — prior to issuing any rulings;~~
- ~~(f) — of any proposed change to the Trading Manager;~~
- ~~(g) — of any proposed modifications to information disclosure developed under Rule B4.4;~~
- ~~(h) — of any complaint regarding the operation of the Trading Platform or the operation of the Rules received from a Participant or any query or approach from a regulatory or governmental agency in respect of the Trading Platform or the operation of the Rules; and~~
- ~~(i) — of the nature of the submissions received on any Rule change proposal.~~

5.25.1 Meeting Notices: Written notice of the time and place of a meeting of the AdvisoryOversight Board shall be sent to every Member by GlobalDairyTrade ("**Meeting Notices**"), not less than 10 Working Days before the meeting. However, if GlobalDairyTrade, in its absolute discretion acting in good faith and in a manner that is consistent with the objective and role of the AdvisoryOversight Board, considers it desirable or necessary in the circumstances it may convene a meeting at shorter notice and shall specify in the Meeting Notice why it considers a shorter notice period is desirable or necessary in those circumstances.

5.35.2 Contents of Meeting Notice: A Meeting Notice shall include:

- (a) the nature of the topics that are to be discussed at the meeting, which may include the topics specifically listed at Rule B4.6, in sufficient detail to enable a Member to form a reasoned judgment in relation to it (including nominations for Chairperson pursuant to clause 7.1);
- (b) the documents to be submitted to the meeting for consideration by the AdvisoryOversight Board;
- (c) any notification from GlobalDairyTrade required pursuant to Rule B4.6 that has not yet been provided by way of separate update notice ("Update Notice"); and
- (d) any reasons why a shorter notice period for the meeting is desirable or necessary in the circumstances (if applicable pursuant to clause 1.1).

~~5.4 Preparation of Meeting Notice: The Meeting Notice will be prepared by GlobalDairyTrade.~~

~~5.5.3 Meeting Notice suggestions:~~ Members and/or Operational Attendees may contact GlobalDairyTrade at any time after a meeting has been called until 10 Working Days before the meeting to make suggestions on the contents of the Meeting Notice. GlobalDairyTrade shall consider such suggestions in good faith and in a manner GlobalDairyTrade believes to be consistent with the objective and role of the AdvisoryOversight Board.

~~5.6.4 Confidentiality and use of notices:~~ Members must ensure that they observe the requirements set out ~~at~~in clause 14 in relation to any Update Notice or Meeting Notice received from GlobalDairyTrade.

6. PROCEEDINGS AT MEETINGS OF ADVISORYOVERSIGHT BOARD

6.1 **Requirement for quorum:** Subject to clause 6.3, no matters shall be considered at a meeting of the AdvisoryOversight Board if a quorum is not present.

6.2 **Quorum:** Subject to clause 6.3, a quorum for a meeting of the AdvisoryOversight Board is ~~75~~50% or more of the Members present in person (or in accordance with clause 4.5)-), including at least one Member from each Member Group, and the Owner.

6.3 **Lack of quorum:** If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Members may agree. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Members present are a quorum then so long as the Owner is present at that meeting, the Members present are a quorum. If, at an adjourned meeting, the quorum does not include at least one Member from each Member Group, the requirement in clause 6.4 for a resolution of the Oversight Board to be passed with a vote from at least one Member of each Member Group will not apply to resolutions passed in that adjourned meeting, provided that any such resolutions will still require a vote from at least one Member of each Member Group that is represented at the adjourned meeting and the Owner.

~~6.4 Voting: Every Member has one vote. A resolution of the Oversight Board is passed if it is agreed to by:~~

~~(a) subject to clause 6.3, at least two thirds of the Members present at a meeting, including at least one vote from a Member of each Member Group; and~~

(b) the Owner.

6.5 **Written resolution:** A written resolution, signed or assented to by the Owner and at least two thirds of the Members, including at least one Member from each Member Group, entitled to vote on that resolution is as valid and effective as if passed at a meeting of the Oversight Board duly convened and held.

7. CHAIRPERSON OF MEETINGS OF ~~ADVISORY BOARD~~OVERSIGHT BOARD

7.1 **Nominations:** If a Chairperson has not yet been appointed pursuant to clause 7.2, or has been removed or has retired pursuant to clause 7.3, Members and/or Operational Attendees may contact GlobalDairyTrade to suggest a potential nominee for the position of Chairperson within a reasonable time before the next scheduled meeting of the Oversight Board. GlobalDairyTrade shall consider such suggestions in good faith and in a manner it believes to be consistent with the objective and role of the Advisory Oversight Board and in accordance with clause 7.4. Once GlobalDairyTrade considers that it has a suitable nominee~~(s)~~ for Chairperson, it may advise Members by way of a Meeting Notice that a meeting of the Oversight Board will be held in which the Members will be asked to vote on the appointment of that person as the Chairperson will be appointed by Members (and GlobalDairyTrade will specify the names of those name, background and qualification of its nominee~~(s)~~ in the Meeting Notice).

7.2 **Appointment:** The Chairperson shall be appointed, from the nominee(s) nominated by GlobalDairyTrade, and notified to the Advisory Oversight Board under clause 7.1, by a majority of votes will be appointed if he or she is approved by at least two thirds of the Members present at a meeting of the Advisory Board-, including at least one vote from a Member of each Member Group that is represented at the meeting.

7.3 **Replacement:** The Chairperson-:

(a) may be removed by a majority of votes at least two thirds of the Members at any meeting of present at a meeting, including at least one vote from a Member of each Member Group that is represented at the meeting; and

(b) must retire at the Advisory Board, and then end of a period not exceeding two years following his or her appointment under clause 7.2,

~~7.3~~ in which case a new Chairperson shall be appointed in accordance with clauses 7.1 and 7.2. Members may discuss the removal of, and vote to remove, a Chairperson even if such removal is not contemplated in the Meeting Notice for the relevant meeting.

A Chairperson that retires at the conclusion of a period of two years will remain eligible for reappointment in accordance with clause 7.1.

- 7.4 **Independence:** The Chairperson shall be an independent third party who is not a current representative or Affiliate of GlobalDairyTrade, the Trading Manager, any market operator of or participant in a Relevant Financial Market, any Seller or any Bidder.
- 7.5 **Chairperson:** Subject to clause 7.6, the Chairperson shall chair all meetings of the AdvisoryOversight Board.
- 7.6 **Alternate chairperson:** If a Chairperson is currently appointed but is not present at a meeting, or a Chairperson is not currently appointed, and a quorum is present at a meeting, Members may appoint, by a majority of votes, a Member or Operational Attendee to chair that particular meeting. Members may discuss the appointment of, and vote for, an alternate chairperson even if such a vote is not contemplated in the Meeting Notice for the relevant meeting. For the avoidance of doubt, the sole power of the alternate chairperson will be to chair a meeting of the Oversight Board at which the Chairperson is not present.

8. **MINUTES OF MEETINGS OF ADVISORY BOARDOVERSIGHT BOARD**

- 8.1 **Minutes:** The AdvisoryOversight Board shall ensure that minutes are kept of all proceedings at meetings of the AdvisoryOversight Board. Minutes that have been signed as true and correct by the Chairperson, or an alternate chairperson appointed pursuant to clause 7.6, are prima facie evidence of the proceedings.
- 8.2 **Publication:** All minutes that are signed in accordance with clause 8.1 shall be published on the Information Website within 10 Working Days of the meeting, except where deemed commercially confidential by the AdvisoryOversight Board or GlobalDairyTrade.

~~9. **RECOMMENDATIONS OF ADVISORY BOARD**~~

9. **AMENDMENTS TO THE RULES**

- ~~9.1 **Approval:** Subject to Rule B2.9, the approval of the Oversight~~ **Recommendations:** Recommendations of the Advisory Board shall ~~must~~ be communicated ~~obtained prior~~ to GlobalDairyTrade by implementing any changes to the Rules (each a "Rule Change"). This approval must be sought from the Oversight Board after the public consultation phase has been completed and once the wording of the Rule Change has been finalised by GlobalDairyTrade. Before any final decision is made by the Oversight Board regarding a

Rule Change, the Oversight Board will discuss, in good faith, with GlobalDairyTrade any concerns the Oversight Board has, or outstanding information it requires, in relation to the Rule Change.

9.2 **Analysis:** To assist with the Oversight Board's evaluation of a Rule Change:

(a) GlobalDairyTrade will provide the Oversight Board with summaries of all valid third party submissions made in relation to the Rule Change, as well as any variations proposed to be made to the Rule Change as a consequence of the public consultation process; and

(b) the Chairperson may commission expert legal and/or economic analysis to be carried out to determine the likely impact of the Rule Change, with any such analysis to be provided to the Members and to GlobalDairyTrade.

10. RECOMMENDATIONS OF OVERSIGHT BOARD

10.1 **Recommendations:** in a written report not more than 5 Working Days after a meeting.

(a) The Oversight Board may resolve pursuant to clauses 6.4 or 6.5 to communicate recommendations to GlobalDairyTrade on such matters as it sees fit having regard to the objective and role of the Oversight Board.

9.1(b) As set out in Rule B1.56, any recommendation made by the ~~Advisory Board~~Oversight Board (including under clause 11.3(a)) will be considered by GlobalDairyTrade in good faith and in a manner that is consistent with the Guiding Principles but GlobalDairyTrade will not be under any obligation to adopt or follow such recommendation.

(c) Notwithstanding clause 10.1(b), where the Oversight Board resolves to recommend that a change be made to the Rules (whether by introducing a new Rule or by amending or revoking an existing Rule), GlobalDairyTrade, acting in good faith, will work with the Oversight Board to prepare a rule change proposal to be submitted for public consultation, unless GlobalDairyTrade reasonably believes that there are commercially justifiable reasons not to do so or to otherwise delay such rule change proposal. The fact that such a rule change proposal has been submitted for public consultation will in no way limit or avoid the need for such Rule change to be subsequently approved by GlobalDairyTrade and the Oversight Board, as contemplated by Rule B2.2.

11. RULINGS PANEL

11.1 Establishment:

- (a) Subject to clause 11.1(b), the Chairperson shall be responsible for convening a Rulings Panel from time to time for the purpose of hearing and determining any complaints referred to him or her by GlobalDairyTrade under Rule B3.3 ("Complaint").
- (b) Upon the referral of a Complaint to him or her by GlobalDairyTrade, the Chairperson will, unless it reasonably considers that the Complaint is vexatious, frivolous, or is, in substance, a dispute to which Rule A2.5 applies, take steps to convene a Rulings Panel in accordance with Appendix Four.

11.2 Funding: GlobalDairyTrade will meet the reasonable costs and remuneration of the members of the Rulings Panel.

11.3 Powers:

- (a) The Rulings Panel may do any of the following:
- (i) hear and determine in a written decision any Complaint in accordance with this clause 11 and Appendix Four;
 - (ii) determine for the purposes of Rule A5.4(a) that a breach of the Rules has occurred, in which case receipt of the Rulings Panel's written decision by the Participant in breach constitutes notice for the purposes of that Rule (but, for the avoidance of doubt, even if the Rulings Panel makes a determination for the purposes of Rule A5.4(a) that a breach has occurred, remedy of that breach will be to the reasonable satisfaction of GlobalDairyTrade); and/or
 - (iii) require a Participant in respect of whom a Complaint has been upheld to reimburse the reasonable costs and expenses incurred by GlobalDairyTrade (including any costs incurred under clause 11.2) in relation to a Complaint.
- (b) A Rulings Panel may not adjudicate disputes to which Rule A2.5 applies or disputes between Participants that otherwise arise at law. For the avoidance of doubt, no party to a Complaint (or any other person) shall, by virtue of a decision of a Rulings Panel, be restricted in bringing any action in a court or arbitration or equivalent adjudicative body in respect of the same subject matter as the

Complaint or decision, and neither the Panel's decision nor any findings within a decision will bind the parties in any such action.

(c) A Rulings Panel may rely on its members' own judgement and opinion and will not be acting as an arbitral tribunal for the purposes of the Arbitration Act 1996.

11.4 **Composition:** The Rulings Panel shall be constituted in accordance with Appendix Four ("**Rulings Panel**"), but will ordinarily be comprised of:

(a) the Chairperson; and

(b) two independent persons appointed in accordance with Appendix Four.

11.5 **No liability:** No member of the Rulings Panel (including, for the avoidance of doubt, the Chairperson) is liable, including for negligence, in respect of anything done or omitted to be done in their capacity as a member of the Rulings Panel, and are indemnified by GlobalDairyTrade for any costs or losses incurred by them in connection with their conduct (other than fraudulent or dishonest conduct) as a member of the Rulings Panel.

11.6 **Process:** The appointment of a Rulings Panel and the process by which the Rulings Panel determines a Complaint are set out in Appendix Four.

11.7 **Decisions and publication:**

(a) All decisions made by a Rulings Panel shall be either unanimous or by a majority decision.

(b) A final written decision made by a Rulings Panel will be a final and binding determination between the parties in relation to a Complaint, but will not bind or restrict in any way GlobalDairyTrade's power to issue a future ruling under Rule B3.4 or to amend its Rules, and will not bind GlobalDairyTrade or any future Rulings Panels in relation to the same conduct by other Participants or similar conduct by the same Participants.

(c) All decisions shall be published on the Information Website within 10 Working Days of the decision, except where deemed (in whole or in part) commercially confidential by the Rulings Panel in its decision, or by the Oversight Board or GlobalDairyTrade (in which case, the decision, or any parts of it deemed to be commercially confidential, will not be published).

(d) At the conclusion of each year, the Oversight Board may elect to publish a report on the Information Website summarising the nature and number of Complaints

that have been referred to the Rulings Panel for determination during the course of that year, and the Rulings Panel's decisions in relation to them.

10.12. REMUNERATION AND OTHER BENEFITS OF MEMBERS

10.12.1 Remuneration and costs: Subject to clause ~~41~~13, Members and their Representatives are not entitled to remuneration for carrying out their respective duties as Members and Representatives and will bear their own costs in relation to the carrying out of those duties, including, without limitation, travel to and attendance at AdvisoryOversight Board meetings.

11.13. BENEFITS OF OTHER PARTIES

11.13.1 Costs: ~~An Independent Member or The~~ Chairperson and/or any independent person appointed to the Rulings Panel may be reimbursed for their reasonable costs and/or remunerated by GlobalDairyTrade for ~~its reasonable costs in~~ carrying out ~~its~~their role ~~as an Independent Member~~, as agreed with GlobalDairyTrade from time to time.

12.14. CONFIDENTIALITY AND USE OF INFORMATION

12.14.1 Members, the Chairperson, the Rulings Panel, GlobalDairyTrade, the Trading Manager and the Operational Attendees must be mindful of their competition law obligations and, therefore, must observe the following to govern the conduct of all meetings, negotiations, discussions, Rulings Panel processes and other correspondence between Members in connection with the fulfilment of the AdvisoryOversight Board role:

- (a) In fulfilling their AdvisoryOversight Board role, Members shall not have access to, nor discuss with other Members, any non-public information held by any other Member, GlobalDairyTrade, the Rulings Panel and/or the Trading Manager relating to, or arising from, one or more Trading Event(s) including, without limitation, information referred to in Rules C1.8, C1.9, C2.1, C2.2, C2.3, C2.5, ~~C2.9, C2.10, C2.11,~~ C5.17, C5.18 C7.1, C7.3, C7.4 and C7.48. In fulfilling their AdvisoryOversight Board role, Operational Attendees must not disclose any such information to Members.
- (b) Anyany other non-public information held by GlobalDairyTrade, the Rulings Panel and/or the Trading Manager not referred to in clause 14.1(a) above, may be disclosed by GlobalDairyTrade, the Rulings Panel and/or the Trading

Manager to Members provided that clauses 14.1(d)(i) and (ii) apply. For the avoidance of doubt, such information may include, without limitation:

- (i) GlobalDairyTrade's non-public proposals under consideration in relation to the conduct, or operation, of future Trading Events; and/or
 - (ii) Any other non-public information held by GlobalDairyTrade, the Rulings Panel and/or the Trading Manager that GlobalDairyTrade considers needs to be disclosed to Members in order for GlobalDairyTrade to comply with Rule B4.6.
- (c) Members will not have communications with other Members in relation to, or in connection with, the fulfilment of their AdvisoryOversight Board role outside of the meetings of the AdvisoryOversight Board: (including any position on the Rulings Panel).
- (d) Subject to clauses 7.3 and 7.6, in fulfilling their AdvisoryOversight Board role, (including any position on the Rulings Panel), ~~Members and Operational Attendees~~ must not discuss any topic with any other Member, or disclose any document to any other Member unless:
- (i) _____ that topic or document has been included:
 - (aa) _____ in the Complaint that has been provided to the Rulings Panel pursuant to Rule B3.3 or any subsequent information that has been supplied to the Rulings Panel solely in connection with the Complaint; or
 - ~~(+)~~(bb) _____ in the Meeting Notice circulated in advance of a meeting of the AdvisoryOversight Board, pursuant to clauses 5.2(a) and (b), as being a topic for discussion or a document that will be disclosed at the meeting; and
 - (ii) it is demonstrably necessary for the purposes of fulfilling the objective and role of the AdvisoryOversight Board (set out at clause 1.1~~)~~ or the Rulings Panel (as applicable).
- (e) For the avoidance of doubt, in fulfilling their AdvisoryOversight Board role, Members must not exchange or discuss:
- (i) specific, non-aggregated, commercially sensitive confidential information relating to any individual Member's price, terms of sale,

customers, suppliers, non-public future plans, or costs, including any information that a Member has received on a confidential basis from GlobalDairyTrade pursuant to the Rules;

- (ii) any specific aspect of a Member's respective business that is not necessary for fulfilling the objective and role of the Advisory Oversight Board (set out clause 1.1); or
 - (iii) any proposal that would have the purpose or effect of unfairly damaging any Bidder or Seller.
- (f) No contract, arrangement or understanding may arise between Members as to the conduct of a Member's business as a result of any discussions or negotiations in connection with the fulfilment of the Advisory Oversight Board role.
- (g) Each Member, Chairperson and Operational Attendee must ensure that any Confidential Information that it receives, including Update Notices or Meeting Notices, is marked "*Confidential and subject to common interest privilege*" and kept in a separate file. The file cover shall be marked "*Confidential and subject to common interest privilege*".
- (h) A Member, Chairperson or Operational Attendee must not disclose Confidential Information to any person, or make use of, or act on, the Confidential Information, except:
- (i) for the purpose of carrying out the role and function of the Advisory Board; Oversight Board or the Rulings Panel (as the case may be);
 - (ii) as required by law; or
 - (iii) in accordance with clause (i) below.
- (i) Each Member will nominate and provide the Chairperson with a record, updated as necessary, of their team of officers, employees or advisers, that require access to Confidential Information for the purposes of assisting the Member to carry out the role and function of the Advisory Oversight Board (the "**Teams**") (external advisers may be listed by firm/organisation name). This record will be kept on file by the Chairperson. Any Representative must be a member of a Member's Team in order to be appointed under clause 1.1. The following protocols will apply in relation to the Teams:

- (i) Confidential Information will not be disseminated beyond the Team members and will only be disclosed to the Team members for the purpose of carrying out the role and function of the [AdvisoryOversight Board](#).
- (ii) The Team will not be any broader than is absolutely necessary to assist the Member in carrying out the role and function of the [AdvisoryOversight Board](#).
- (iii) To the greatest extent possible the Team members that are internal officers, employees or advisers of a Member should be senior personnel.
- (iv) Members may add persons to their respective Teams members as necessary to assist the Member in carrying out the role and function of the [AdvisoryOversight Board](#) by providing the Chairperson with an updated record of their Team members.
- (v) Before assisting the Member to perform its [AdvisoryOversight Board](#) role or function, or accessing any Confidential Information, each Team member must have explained by a legal counsel approved by GlobalDairyTrade, the application of competition laws, in order to facilitate a clear understanding of the principles underlying the restrictions on the exchange and/or use of Confidential Information contained in this Charter, as well as of the range of conduct that is prohibited by, and the range of possible penalties for proven breaches of, competition laws.
- (vi) Each Member, and their respective Team members, must take all reasonable steps necessary to protect Confidential Information in their possession from being improperly accessed by any persons not in their Team.
- (j) Each Member must destroy any Confidential Information held in its file once it considers, in its reasonable judgment, that it no longer requires that Confidential Information to enable it to carry out the role and function of the [AdvisoryOversight Board](#).
- (k) In the event of uncertainty as to the competition law implications of exchange of any particular piece of Confidential Information, or discussion on any particular

topic, a Member, Chairperson or Operational Attendee should consult with GlobalDairyTrade immediately.

- (l) The Chairperson, any Operational Attendee and/or any Member, may terminate a meeting at any time if he/she considers that any discussion, or information exchange, is taking place that may contravene any competition laws, and GlobalDairyTrade's legal counsel must be informed of such termination immediately by telephone call from the Chairperson.
- (m) If the Chairperson, any Operational Attendee or any Member becomes aware of any discussion, or information exchanges, between Members that it considers may contravene any competition laws, it will report that immediately by telephone call to GlobalDairyTrade's legal counsel.

13.15. AMENDMENT TO CHARTER

~~13.1~~ This Charter ~~(including for the avoidance of doubt the appendices)~~ may be amended by GlobalDairyTrade from time to time by ~~notice in writing to the Advisory Board.~~

~~13.215.1~~ ~~Where GlobalDairyTrade proposes to amend this Charter, GlobalDairyTrade must consult with the Advisory Board and following the Members rule change procedure set out in Rule B2 of the Rules, including in good faith in relation to the amendment and consider response to a recommendation by the merit and materiality of any issues raised. For the avoidance of doubt, this requirement to consult with the Advisory Board and the Members in good faith does not allow the Advisory Board, or Members, a power of veto over any amendment to this Charter. Oversight Board as contemplated by clause 10.1(c).~~

14.16. DEFINITIONS AND INTERPRETATION

~~14.116.1~~ **Definitions:** In this Charter, unless the context otherwise requires:

~~"Act" means the New Zealand Companies Act 1993.~~

~~"Advisory Board" means the advisory board, consisting of the Members, established by GlobalDairyTrade to carry out the objective and the role set out in clause 1.1.~~

"Bidder" means a Participant who is accepted as eligible to participate in a Trading Event and has signed an approved Participation Agreement.

"Bidder Group" means the group of Members that are appointed by GlobalDairyTrade pursuant to clause 2.1(b) of this Charter.

"**Chairperson**" means the chairperson of the [AdvisoryOversight](#) Board, appointed by the [AdvisoryOversight](#) Board under section 7.1.

"**Charter**" means this charter, as amended from time to time in accordance with clause 15.

"**Confidential Information**" means non-public information received by a Member, Chairperson ~~or~~, Operational Attendee [or member of the Rulings Panel](#), in the performance of its [AdvisoryOversight](#) Board role, ~~or Rulings Panel role (as the case may be)~~, for as long as that information is not public knowledge (unless it has become public information as a result of a breach of this Charter in which case it shall continue to be Confidential Information).

["Finance Group" means the group of Members that are appointed by GlobalDairyTrade pursuant to clause 2.1\(c\) of this Charter.](#)

"**GlobalDairyTrade**" means the entity that operates the Trading Platform in conjunction with the Trading Manager.

["Information Website" means the GlobalDairyTrade Information Website located at the address www.globaldairytrade.info, or any other web address specified by GlobalDairyTrade.](#)

"**Member**" means a person, entity, or business appointed as a member of the [AdvisoryOversight](#) Board in accordance with the Rules and this Charter.

["Member Group" means each of the Seller Group, Bidder Group and Finance Group.](#)

["Oversight Board" means the Oversight Board, consisting of the Members, established by GlobalDairyTrade to carry out the objective and the role set out in clause 1.1.](#)

["Owner" means the ultimate owner of GlobalDairyTrade, being currently Fonterra Co-Operative Group Limited.](#)

"**Participant**" means a person (other than GlobalDairyTrade) who has entered into a Participation Agreement.

"**Person**" includes an individual, partnership, firm, company, body corporate, corporation, association, organisation, trust, a state or government or any agency thereof, a municipal, local or regional authority, and any other entity or organisation, whether incorporated or not (in each case whether or not having a separate legal personality).

"**Product**" means any one of the dairy products listed on the Information Website, from time to time, as being for sale through the Trading Platform.

"**Relevant Financial Market**" means a financial market that has been approved by GlobalDairyTrade to settle financial instruments by reference to the Winning Prices for a Product offered on the Trading Platform.

"**Representative**" means an individual that is appointed as the representative of a Member pursuant to clause 1.1.

"**Rules**" means the GlobalDairyTrade Market Rules dated 18 August 2011, as amended from time to time.

"**Seller**" means a Participant who is accepted as eligible to use the Trading Platform to offer one or more Products for sale during a Trading Event and has signed an approved Participation Agreement.

"**Seller Group**" means the group of Members that are appointed by GlobalDairyTrade pursuant to clause 2.1(a) of this Charter.

"**Trading Event**" means the GlobalDairyTrade trading events at which Sellers offer dairy Products for sale via the Trading Platform in accordance with the Rules.

"**Trading Manager**" means the Trading Manager appointed under Rule B4.2 of the Rules.

"**Trading Platform**" means the trading platform known as GlobalDairyTrade through which Trading Events are held and includes all activities and infrastructure associated with the operation of Trading Events.

~~"**Information Website**" means the GlobalDairyTrade Information Website located at the address www.globaldairytrade.info, or any other web address specified by GlobalDairyTrade.~~

"**Working Day**" has the meaning set out in section 2 of the [ActNew Zealand Companies Act 1993](#).

14.216.2 Interpretation: In this Charter, unless the context otherwise requires:

- (a) headings are inserted for convenience only and shall be ignored in construing this Charter;
- (b) the singular includes the plural and vice versa;

- (c) reference to any legislation or to any provision of any legislation (including regulations and orders) includes:
 - (i) that legislation or provision as from time to time amended, re-enacted or substituted;
 - (ii) any statutory instruments, regulations, rules and orders issued under that legislation or provision;
- (d) “written” and “in writing” include any means of reproducing words, figures and symbols in a tangible and visible form;
- (e) words and expressions defined or explained in the Rules have the same meaning in this Charter;
- (f) where any word or expression is defined in this Charter, any other grammatical form of that word or expression has a corresponding meaning;
- (g) references to clauses and sections are references to clauses and sections in this Charter, unless stated otherwise.

14.316.3 Charter to prevail: To the extent there is any conflict between:

- (a) a provision in this Charter and a provision in the Rules; or
- (b) a word or expression defined or explained in the Rules and a word or expression defined or explained in this Charter,

the provision, word or expression in this Charter prevails.

APPENDIX ONE

~~Objective of Advisory Board~~

Seller Appointment Process

~~The primary objective of the Advisory Board is to ensure Seller representation appointment process operates as follows:~~

- ~~a. Each Seller is assigned a region based on that Seller's largest source of supply offered on the Trading Platform ~~is developed~~ over the 12 months prior to the month of the selection process, with the regions being defined as Americas; Europe, Middle East & Africa; and Oceania, Asia & Rest of World (Americas includes all of North & South America and Latin America. Europe, Middle East & Africa includes Eastern Europe and Russia).~~

~~in accordance with the Guiding Principles (the Guiding Principles, as at the date of this Charter, are set out in Appendix Two).~~

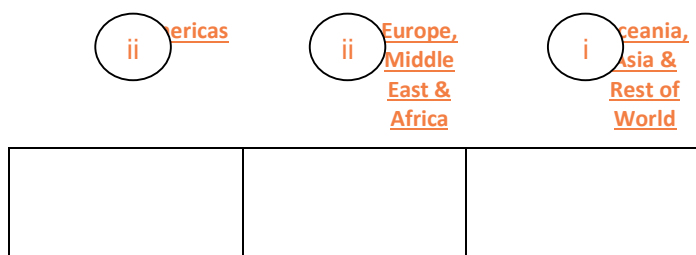
~~Role of Advisory Board~~

~~The role of the Advisory Board includes (but is not limited to):~~

- ~~a) identifying and proposing to GlobalDairyTrade changes to the Rules and the operation of Trading Events that would further the objective in Rule B1.2;~~
- ~~b) responding to any notifications from, or requests for consultation by, GlobalDairyTrade;~~
- ~~c) advising GlobalDairyTrade on whether changes to the Rules or operation of Trading Events proposed by GlobalDairyTrade would further the objective in Rule B1.2; and~~
- ~~d) establishing working groups as agreed with GlobalDairyTrade to consider specific issues and to develop recommendations regarding the Rules or operation of the Trading Platform for consideration by the Advisory Board.~~
 - ~~b. The first three Sellers would be selected as follows~~
 - ~~i. The first Seller selected is the Seller with the largest offer quantity over past 12 months;~~
 - ~~ii. The second Seller is the next largest seller who is in a different region from the first Seller;~~
 - ~~iii. The third Seller is the next largest Seller who is in the last remaining region not covered by the first two Sellers.~~

~~The first three Sellers will be sufficient to ensure each region is covered by one Seller, as illustrated below:~~

~~Example only:~~

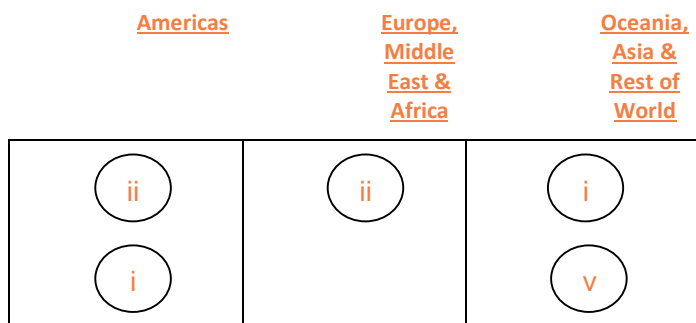


c. To make up to five Sellers, the last two Seller will be selected as follows:

- i. The fourth Seller is the next largest Seller across all regions;
- ii. The fifth and last Seller is the next largest Seller who is in a region not covered by the fourth Seller.

The end result will be that some regions will be covered by more than one seller, as illustrated below:

Example only:



d. If one or more selected Members decline their invitation a replacement Member will be selected using the above process, amended such that it results in a spread of representation as described above.

Invited Members will have a specified time to accept an invitation to become a Member of the Oversight Board. If an intention to accept is not received within the set timeline, the invitation will be considered as declined and GlobalDairyTrade will proceed with the invitation of another Member.

If a Member initially accepts their invitation but ceases to be a Member of the Oversight Board part way through their term, a replacement Member will be added using the above process, amended such that it results in a spread of representation as described above. No Member that has been removed from the Oversight Board by GlobalDairyTrade in accordance with the Charter will be eligible for reselection without

GlobalDairyTrade's consent, and the above process will be amended to reflect this intention.

- e. If a Seller is a group of associated businesses, GlobalDairyTrade may, in its absolute discretion acting in good faith and in a manner that is consistent with the objective and role of the Oversight Board, select one of that Seller's associated businesses as a Member instead of appointing that Seller as a Member.

APPENDIX TWO

Guiding Principles

The goal is to develop and manage a multi-seller Trading Platform for trading dairy products that embraces the objectives of independence, neutrality and transparency, and is trusted by both buyers and sellers. In furtherance of this goal, the following principles will be used to guide any modifications to the Rules and governance structures, and to inform the administration and operation of the Trading Platform.

1 — Foster efficient and competitive markets

The Rules are intended to foster efficient and competitive markets which:

- encourage the discovery of prices for the products traded through the competitive interaction of buyers and sellers;
- establish prices that clear the market (in the sense that the quantity the purchasers are willing to buy at the market price equals the quantity producers are willing to sell at the market price); and
- allow buyers and sellers to identify and take responsibility for managing risk.

2 — Enable the entry of new buyers and sellers

The Rules are intended to enable the entry of new buyers and sellers on consistent terms and facilitate the trading of new products and contracts.

3 — Comply with the law

The Rules and actions of all Participants are intended to comply with the laws of all applicable jurisdictions, including commercial, securities and competition laws.

4 — Robust and enforceable Rules

The Rules are intended to be robust and enforceable through a process which is neutral, independent and confers sufficient power to monitor and enforce the Rules.

5 — Transparent process

The Rules and governance structures are intended to maintain a process which:

- is transparent;
- is not biased to any party, including limiting the potential for any party to amend the Rules in a manner that introduces an unjustifiable bias; and
- achieves a balance between providing certainty within the Rules and flexibility to alter the Rules in line with changes in the market environment.

Bidder Appointment Process

The Bidder representation appointment process operates as follows:

- a. Each Bidder is assigned a region, product category, and category volume as follows:
- i. The region will be assigned to the Bidder according to the country identified by the Bidder during their registration process (the three regions are Asia & Oceania, Middle East & Africa, and Americas & Europe);
 - ii. The product category will be assigned to the Bidder according to the category in which they purchased the largest quantity over the 12 months prior to the month of the selection process (the three product categories are cream, powders, and other);
 - iii. The category volume for a Bidder will be the total quantity purchased in the Bidder's product category over the 12 months prior to the month of the selection process.
- b. The first three Bidders are selected as follows:
- i. The first bidder selected will be the Bidder with the largest category volume across all product categories – this bidder will stand for a particular region and product category;
 - ii. The second Bidder will be the bidder with the next largest category volume who is in a different region and different product category from the first Bidder;
 - iii. The third bidder will be the Bidder with the next largest category volume who is in the last remaining region and last remaining product category not covered by the first two bidders.

The first three Bidders will be sufficient to ensure each region and each product category is covered by one bidder, as illustrated below:

Example only:

<u>Americas and Europe</u>	<u>Asia & Oceania</u>	<u>Middle East & Africa</u>
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<u>Cream</u>		i	
<u>Powders</u>	i		
<u>Other</u>			i

c. To make up to five Bidders, the last two Bidders will be selected as follows:

- i. The fourth Bidder will be the Bidder with the largest category volume who is in a region/product category combination not already covered by the previous three Bidders;
- ii. The fifth and last Bidder will be the Bidder with the next largest category volume who is in a region/product category combination not already covered by the previous four bidders.

The end result will be that some regions and some product categories will be covered by more than one Bidder, as illustrated below:

Example only:

	<u>Americas and Europe</u>	<u>Asia & Oceania</u>	<u>Middle East & Africa</u>
<u>Cream</u>	i	i	
<u>Powders</u>	ii		v
<u>Other</u>			ii

d. If one or more selected Members decline their invitation a replacement Member will be selected using the above process amended such that it results in a spread of representation as described above.

Invited Members will have a specified time to accept an invitation to become a Member of the Oversight Board. If an intention to accept is not received within the set timeline, the invitation will be considered as

declined and GlobalDairyTrade will proceed with the invitation of another member.

If a Member initially accepts their invitation but ceases to be a Member of the Oversight Board part way through their term, a replacement Member will be added using the above process, amended such that it results in a spread of representation as described above. No Member that has been removed from the Oversight Board by GlobalDairyTrade in accordance with the Charter will be eligible for reselection without GlobalDairyTrade's consent, and the above process will be amended to reflect this intention.

- e. If a Bidder is a group of associated businesses, GlobalDairyTrade may, in its absolute discretion acting in good faith and in a manner that is consistent with the objective and role of the Oversight Board, select one of that Bidder's associated businesses as a Member instead of appointing that Bidder as a Member.

APPENDIX THREE

Finance Group Appointment Guidelines

GlobalDairyTrade may appoint persons from the Relevant Financial Markets to the Oversight Board in its sole discretion. Without limiting that discretion, GlobalDairyTrade may, but is not obliged to, have regard to the following factors when selecting persons from the Relevant Financial Markets:

- the value of trading undertaken on each Relevant Financial Market in respect of financial instruments settled by reference to the Winning Prices for Products offered on the Trading Platform;
- the largest broking and clearing members, by value, on each Relevant Financial Market in respect of financial instruments settled by reference to the Winning Prices for Products offered on the Trading Platform;
- the period in which a person has been a market operator of, or participant in, a Relevant Financial Market;
- the solvency, standing and reputation of a market operator of, or participant in, a Relevant Financial Market; and
- any other factor which GlobalDairyTrade considers to be relevant in light of the purpose, role and function of the Oversight Board, as amended from time to time.

APPENDIX FOUR

Rulings Panel Process

1. The Participant(s) or GlobalDairyTrade (as the case may be) making the Complaint, and the Participant(s) named in the Complaint, are referred to in this Appendix as "Parties".
2. A Rulings Panel shall comprise of:
 - (a) the Chairperson (subject to clause 3(c) below); and
 - (b) two independent persons, appointed in accordance with clause 3 below.
3. In order to convene a Rulings Panel, the Chairperson shall:
 - (a) confirm to GlobalDairyTrade that he or she has no conflict of interest in relation to the Complaint and is otherwise available to hear the Complaint. If that confirmation is provided to the satisfaction of GlobalDairyTrade, the Chairperson shall be appointed as Chairperson of the Rulings Panel. If that confirmation is not provided, then three persons shall be appointed under sub clauses (b) to (d) instead of two.
 - (b) The Chairperson, or in the case where the Chairperson is unable to be appointed to the Rulings Panel for the purposes of clause (a) above, GlobalDairyTrade or, if GlobalDairyTrade is the party making the Complaint, the Oversight Board, shall nominate two further persons to be appointed to the Rulings Panel to hear the Complaint. In so nominating, the Chairperson (or GlobalDairyTrade or the Oversight Board, as the case may be) may have regard to the qualifications and expertise of the proposed nominees in light of the particular Complaint, but may make any such nomination in his or her (or its, as the case may be) absolute discretion.
 - (c) The Chairperson (or GlobalDairyTrade or the Oversight Board, as the case may be) shall seek written confirmation from each proposed nominee that he or she has no conflicts of interest in relation to the particular Complaint and is otherwise available to hear the Complaint. If that confirmation is provided, to the satisfaction of the Chairperson (or GlobalDairyTrade or the Oversight Board, as the case may be), the name of the nominee(s) shall be provided to the Parties, who may provide submissions within 3 working days on the appropriateness of the nominee(s) to be appointed to the Rulings Panel to hear the Complaint. The Chairperson (or GlobalDairyTrade or the Oversight Board, as the case may be)

must consider any such submissions, but has absolute discretion (including in relation to conflicts of interest) as to the appointment of any members of the Rulings Panel.

(d) Once the Chairperson (or GlobalDairyTrade or the Oversight Board, as the case may be) has considered the Parties' submissions (if any) as to the identity of the nominees, he or she (or it) may appoint a nominee or nominees to the Rulings Panel by informing the nominee(s) in writing, which notice shall be copied to the Parties.

(e) In the event three persons have been appointed to the Rulings Panel by GlobalDairyTrade or the Oversight Board (as the case may be) in accordance with clauses (b) to (d) above, GlobalDairyTrade or the Oversight Board (as the case may be) will determine which of those three persons shall act as Chairperson of that Rulings Panel.

(f) Once the Rulings Panel has been convened, its Chairperson will seek the Parties' views on the most appropriate and efficient means of hearing and determining the Complaint. For the avoidance of doubt, the Rulings Panel may in its absolute discretion determine the procedure for hearing and determining a Complaint.

(g) The Rulings Panel must:

(i) give the Party against whom a Complaint has been lodged a reasonable opportunity to respond to the Complaint; and

(ii) where, at any stage prior to issuing a final decision, a majority of the Rulings Panel considers there is material uncertainty about the interpretation of a particular Rule, seek a written statement from GlobalDairyTrade as to its view of the intended meaning and/or correct interpretation of that Rule (and such written statement must be made available to the Parties prior to the Rulings Panel's determination of the Complaint).

(h) The Rulings Panel may (subject always to clause (g)(i) above):

(i) require a Party to provide information to the Rulings Panel, whether by way of documents, statements of evidence or submissions;

- (ii) appoint an expert or other advisor of its own volition (and, if so, the Oversight Board will pay that expert or advisor's reasonable costs); and/or
- (iii) determine the Complaint "on the papers" or following a hearing with the Parties (however, if the Rulings Panel convenes a hearing, it must invite all Parties to attend and give them a reasonable opportunity to present their position).
- (i) The Rulings Panel may make any order referred to in clause 11.3(a) of the Charter, whether sought by a Party, or ordered of the Rulings Panel's own volition, subject only to clause (k) below.
- (j) Failure of a Party to comply with a procedural direction or request of the Rulings Panel may result in an adverse inference being drawn in respect of a Complaint, or a Complaint being determined against the Party in default, but is not itself a breach of the Rules.
- (k) The Rulings Panel must provide its draft decision to all the Parties, who will then have 10 working days to provide any comments it wishes in writing, including as to whether any material within the draft decision is commercially sensitive or confidential. The Rulings Panel may, but is not obliged to, take such comments into account, and must then deliver a final decision.
- (l) There is no right of appeal of any kind from a decision of the Rulings Panel.