

FGO – CDSP invoicing – indirect options – legal aspects

1 Introduction

- 1.1 The 0656 charging group meeting of 27 May 2016 discussed possible arrangements for CDSP charges to be invoiced to CDSP customers (or certain CDSP customers) via the Transporters ('indirect' invoicing) as distinct from 'direct' invoicing.
- 1.2 By way of clarification, under direct invoicing:
- (a) the CDSP issues invoices for its charges direct to each of its Customers (for the services it provides to the Customers);
 - (b) each Customer receives a single invoice (or set of invoices) for all CDSP charges;
 - (c) each Customer makes payment of the CDSP charges direct to the CDSP;
 - (d) the CDSP would manage Customer credit, invoice disputes and payment default directly with the Customer concerned.
- 1.3 Under indirect invoicing, all or some of these processes are routed through the Transporter(s). From a legal perspective there is a basic distinction between:
- (a) Case 1 – the CDSP invoices the Transporter, and the Transporter recharges the Customer;
 - (b) Case 2 – the Transporter acts as agent for the CDSP in sending an invoice to the Customer.
- 1.4 This note addresses issues which have legal aspects – it does not address the practical arrangements that would be needed in place to implement Transporter invoicing.

2 Case 1

- 2.1 In Case 1, the debt to the CDSP is due from the Transporter (implying that the CDSP service was supplied to the Transporter); a separate debt is due from the Customer to the Transporter; Customer credit risk and debt enforcement is with the Transporter. Case 1 does not sit well with the idea that the relevant Customers contract directly with the CDSP for services.
- 2.2 It was accepted in the meeting that if a Transporter-submitted approach to invoicing were adopted, it would be under Case 2 and not Case 1.

3 Case 2

- 3.1 Considerations for Case 2 include the following:
- (a) The Customer debt is due to the CDSP, not the Transporter. The debt is therefore separate from any debt (eg for transportation charges) owed by the Customer to the Transporter;
 - (b) The Transporter issues the invoice for CDSP charges as agent for the CDSP; it issues invoices for transportation charges as principal. Because the debt to the

CDSP is separate, it cannot be included in the same invoice as transportation charges – a separate invoice is issued;

- (c) The invoice for CDSP charges would presumably need to contain the same detail (allowing verification by the Customer) as if invoiced directly by the CDSP;
- (d) The Customer would also need to make payment of CDSP invoices separately from payment of transportation charges. If the Customer pays the amount (in an invoice for CDSP services) to the Transporter, the Transporter should hold the funds received separately from other funds, since (when received) they are held on behalf of the CDSP. Probably the Transporter should establish a trust account to hold such moneys pending payment to the CDSP.

3.2 In Case 2, the Transporter is effectively acting as a post-box for the CDSP:

- (a) Presumably, where CDSP charges are for CDSP services which can be related to a specific network (DN or NTS), it would be the Transporter which operates that network which submits the invoice. That means that (for a relevant Customer using the DNs as well as the NTS) there would be multiple invoices and multiple payments. (A joint agency, in which all the Transporters jointly act as agent for the CDSP, would seem complex and raise issues about liability as between the Transporters.)
- (b) Where any CDSP charge cannot be linked in this way to a particular network, which Transporter would be responsible for sending the invoice?
- (c) If the Customer wishes to take any elective services (rather than Direct or Agency Services which are inherent in being a UNC party), would the relevant communication be made with the CDSP or with the Transporter (as agent)?

3.3 Further questions to be addressed would include:

- (a) Who would be responsible for monitoring payment of invoices for CDSP charges (Transporter or CDSP)? If payment is made to the Transporter as agent, the Transporter would need to have a role in this monitoring.
- (b) Would the Transporter (as agent for CDSP) be responsible for managing the CDSP's credit policy and security requirements in relation to Customers, or would the CDSP do this direct? One sanction for non-payment of CDSP charges would be to call on security (eg cash or a letter of credit) provided by the Customer. Unless the Transporter held these credit support instruments, a call on them would result in payment direct to the CDSP (conflicting with the principle of payment to Transporter as agent).
- (c) If the Customer disputed an invoice for CDSP charges, would the Customer raise the dispute with the Transporter (as agent) or the CDSP direct? The Transporter would not be in a position to handle or resolve a dispute and would need to refer back to the CDSP – acting as a 'post-box' intermediary in the dispute. However if the dispute were raised directly with the CDSP, the Transporter would be unaware of the amount in which it expected to receive payment of the relevant invoice.
- (d) In the case of late payment, who would be responsible for contacting the Customer, pursuing payment, taking any enforcement measures? If the Transporter, how would this be integrated into the CDSP's credit and enforcement policy

- 3.4 There would be some specific issues arising out of the Transporter's agency:
- (a) Depending on the practical arrangements, it might be necessary to address the possibility of mistakes made by the Transporters in submitting invoices on behalf of the CDSP;
 - (b) It would be necessary to define the Transporter's agency, the scope of its authority, any fiduciary duties owed to the CDSP;
 - (c) If the Transporter is handling information (in the invoice) which is confidential to the Customer and would not otherwise be known to the Transporter, it would be necessary to address confidentiality in the information when held by the Transporter.
- 3.5 A further complication comes out of the fact that, presumably, it is actually the CDSP which generates and issues Transporter invoices (for transportation charges). So the CDSP would, as an Agency Service, act as agent for each Transporter in issuing invoices including an invoice which the Transporter issues as agent for the CDSP.