



Retail Licensing
Ofwat
21 Bloomsbury Street
London
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20 July 2015

Dear Sirs

Licence and policy issues in relation to the opening of the non-household retail market – a consultation.

Thank you for providing us with the opportunity to provide feedback on a wide range of licensing and policy issues in relation to the opening of the retail non-household market. A number of these matters will impact on the final design and operation of the non-household market and we are pleased to note that they are being addressed as part of this consultation.

We have structured our response by focusing on those areas that we believe require further clarification. We would like to note that the four week consultation period, on such a wide range of detailed proposals, has made it challenging to address all of the specific consultation questions raised. We are pleased, therefore, to see that a number of industry workshops are planned in the coming months to consider these issues in greater detail.

Proposals for the new water supply licences (Section 4)

We support proposals to introduce separate licences covering water and wastewater retail. This approach will allow for greater flexibility for market participants.

We agree that enabling the Market Arrangements Code should be via a licence condition which should apply to existing and new licensees and strongly support that integrated undertakers should also be bound by the Code and a mechanism developed to enable this. As the contractual provisions binding market participants will be contained in the MAC Framework Agreement, rather than the Market Arrangements Code itself, it appears that paragraph 1.1.1 of the proposed condition should not require the Appointee/Licensee to be “a party to” the Code.

Proposed amendments to the Instrument of Appointment (Section 5)

In line with discussions held at the industry workshop on 7 July, we are broadly supportive of the proposed ‘stapling’ condition requiring a company’s adherence to the Wholesale-Retail Code. While the principle behind paragraph 1.8.1 of the proposed new condition is correct, the current wording would commit an Appointee to do things which might be legally impossible to implement. For example, it would not be possible for the Appointee’s Wholesale Business to take legal action against its own Retail Business (or vice versa), nor would it be possible for either part of the Appointee’s business to serve notice on the other terminating the relationship. Care is therefore needed in the drafting of this condition to ensure that it effectively binds the Appointee to operate in accordance with the principle of equivalence, while not imposing obligations that it is legally impossible for the Appointee to discharge.

Changes to the application process and intended timeline (Section 6)

We are fully supportive of the proposal that licence applications for the future market should include the provision of a completed certificate of adequacy. However, the relationship, sequencing and processes of the application, certificate of adequacy provision, market accession testing and granting of licences should be reviewed to ensure the timescales required are efficient and reduce any potential administrative burden or possible duplication for all parties.

Other licensing matters (Section 7)

We support the principle of a Market Readiness provision, but do not think it is necessary to include this as a licence condition. Whilst a condition of this type would safeguard against any potential inappropriate behaviours, there are already many incentives to be market-ready without the requirement for a licence condition. We believe this provision would best sit within the Code itself and still be in effect as Codes are implemented by the licence.

Industry codes (Section 8)

We agree in principle that implementing an auction style allocation process would provide protection for customers in the event of Retailer failure. Further clarification is required surrounding the issue of bad-debt customers, particularly where these customers have caused the Retailer to fail. It is understood that the customers will be auctioned off to another Retailer and clarity is required around the auction rules in relation to bad debt customers; the issue being that the Retailer is unlikely to choose or want the bad-debt customers.

We believe there is still more clarification required in relation to the provision of Developer Services, particularly surrounding the issue of 'Building water' (water used as a building supply in respect of developments) and how the relationship between the Wholesaler and the Retailer will operate throughout the entire development period in situations where the developments are domestic premises and therefore not part of the open market.

It is our view that companies operating wholly or mainly in Wales should also be tied to the new Codes so that any legacy arrangements of the old WSL can be minimised. This will also provide consistency across the industry, particularly for Retailers.

Tariffs and charges (section 9)

We are not convinced that the provision of forecast wholesale charges in July of the preceding charging year is either sensible or practical. This will mean that the development of draft charging proposals will coincide with regulatory and financial year end. This has the potential to reduce tariff development during the first year of implementation as companies adjust to the change in timetable. More importantly it seems unnecessary to ask wholesalers to set out their charging proposals some eight months ahead of the charging year in which they would apply.

We agree in principle that the retail elements of Special Agreements should be contestable. For regulated activities, all charges should be transparent and published. However, this should not preclude Wholesalers from providing non-standard, non-regulated services, but these should be separately accounted for, transparent and available for all Retailers.

Please do not hesitate to contact me if you would like to discuss any area of our response in more detail.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "C Offer".

Christopher Offer
Acting Director of Regulation