

Consultation on Ofwat's section 13 and
17J proposal to modify company licences
– removal of the in-area trading ban

Southern Water's Response

5 April 2016



Southern Water's response to the proposal to modify company licences to remove the in-area trading ban

We welcome the opportunity to respond to the section 13 proposal to modify our Instrument of Appointment to remove the in-area trading ban.

The in-area trading ban was introduced by Ofwat following the statutory duty imposed by the Water Act 2003 to prevent level playing field issues and incumbent companies dominating the non-household retail market. These issues include showing undue preference towards an associated retailer, unfairly or unduly discriminating between customers connected to the incumbent network, providing services and employees at an advantageous rate or not being fairly recharged at an equitable rate. Even perceived undue preference towards an associated retailer can impact the market, with potential new entrants failing to enter the market.

We believe that to date nothing has fundamentally changed and that concerns regarding level playing field still apply. As such, we believe it is premature to lift the ban at this stage.

Whilst we accept that information notice IN 16/01 has required all incumbents to review and publish their condition R compliance code prior to the licence change, the level of control is not to the degree that will be in place at market opening. Level playing field compliance at market opening will include prescribed market processes for all interactions between wholesalers and retailers including performance reporting, equitable access to market data, provisions for soft exit and full separation of the NHH business unit to an associated licensed retailer, and a stapling condition applied through Schedule 8 of the Market Arrangements Code to ensure equivalent market processes and contracts are applied to integrated businesses. The lifting of the ban at this point would allow retailers associated with incumbent companies to negotiate national contracts before these level playing field arrangements are in place and the NHH retail market has been fully opened.

We do not support the change to the licence condition at this time. We would only consent to the change under section 13 on the basis that all other appointees have similarly consented to the modification to ensure consistency between companies.

Should you have any queries regarding our response, or would like to discuss any aspect of it with us, please contact our Market Reform Manager, Dylan Freeman, on 01903 272351 or by email dylan.freeman@southernwater.co.uk