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Dear Chris

CONSULTATION ON SELF-SUPPLY LICENCES

Thank you for the opportunity to comment on Ofwat's consultation on self-supply licences.

Please find our comments below on the proposed form of the self-supply licences. We have structured our response under the headings of our main concerns, namely being: Self-supply retailer disconnections; interim self-supply; counter party credit risk; maintaining a list of premises associated with the licensee; water resale; and definitions.

Self-supply retailer disconnections

The Wholesale Retail Code requires a Retailer to be the one that applies to disconnect an end customer. However, in the case of self-supply, the Retailer *is* the end customer. Self-suppliers in general, and particularly those that have gone into administration, maybe unwilling, or unable, to apply to have their own premises disconnected. The Wholesaler, therefore, has no way to terminate the services that it is providing to the end customer, and consequently has a potentially open ended liability.

We note that the consultation mentions that Section 61 (1) and (1ZA) of WIA91 allows disconnection by an undertaker in circumstances in which money is owed to it by the occupier of the premises. However in the case of a self-supplier it is the Retailer that owes the Wholesaler money rather than the occupier (who is most likely to be an associated company, rather than the Retailer itself).

The Wholesale Retail Code does allow Wholesalers to disconnect for illegal water use, such as theft by bypassing, or tampering with a meter, or making an unauthorised connection to a main, however this does not cover the situation in which a self-supplier refuses to pay, or is unable to pay. In our view, the

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Wholesale Retail Code needs to allow the Wholesaler to disconnect an end customer in the event that that end customer is a self-supplier and that it has breached the terms of its contract.

Interim self-supply

In the event that a self-supplier does go into administration, it is also unclear who has the right to bill the end customer. By entering administration a self-supplier will no longer be a Retailer. The end customers at its premises therefore will no longer have a Retailer from which to purchase water supplies. In theory, this should be covered by the Interim Supply Code. We note, however, that this circumstance is explicitly excluded from the relevant provisions of the Interim Supply Code.¹ Consequently, under the current drafting, the sites belonging to a self-supply Licensee would not be brought into the market and provided with a retailer in the event that it ceases to trade. This leaves the end customer in limbo. As the wholesaler can't bill end customers, it also leaves the wholesaler without an obvious mechanism to collect the charges owed. In our view, Ofwat needs to make it clear who should charge these customers, and the process whereby they should be entered into the market.

Counterparty credit risk

Many companies (e.g. banks, restaurant chains, pub groups, supermarket chains coffee houses etc.)² each own or occupy thousands of commercial premises that they could supply with a self-supply licence. We are concerned, therefore, that the scenarios set out above would leave the Wholesaler providing services for which it is unable to collect payment and for which it is unable to limit its liability by disconnection, leading to a counterparty credit risk that could be more material than that posed by many "normal" Retailers. It will be important that this issue is addressed before any self-supply licences are granted.

List of premises that are associated with the licensee

The consultation states that there will be a list of premises that are associated with the licensee in a schedule to the licence, and that this will be "*updated on an*

¹ "The Authority shall only use its power... to direct an Eligible Licensee to provide Interim Supply in respect of any Premises in the following circumstances... (b) that the Previous Licensee is **not** a Self-Supply Licensee" [our emphasis].

² As far as we can tell, typical companies with more than a thousand sites include, Mitchells & Butlers, J Sainsbury, Tesco Stores, Royal Bank of Scotland, Royal Mail Group, Marks and Spencer's, HSBC Bank, Waitrose, and Starbucks.

annual basis as necessary".³ We agree that the list of premises should be included in the licence and updated regularly. We are concerned, however, that updating this list on an annual basis will not be sufficient. This is particularly so, for those self-suppliers with many hundreds (or thousands) of associated premises, that routinely acquire and dispose of several premises each month. We suggest that a requirement is included in their licence for them to inform Ofwat of any changes in their list of associated premises at least monthly, and the licence schedule amended accordingly.

Water resale

The PR14 household retail price controls protect households directly connected to undertaker's networks from overcharging. Similarly, household customers whose water is supplied via a private water supplier through a private network are protected from unfair prices by The Water Resale Order 2006 ("the Order"). However, the Order states that "*Nothing in this Order shall apply to water supplies provided by a licensed water supplier*".⁴ We are concerned, therefore, that customers whose water is supplied via a private water supplier (e.g. landlord or mobile home site owner) that becomes a self-supplier would lose their protection from overcharging.

Definitions

As the licensee will be required to list all of its premises in its "premises schedule" it would be helpful if the definition of "premises" was included in the list of defined words.

I hope the above comments are helpful, please feel free to contact us if you would like to discuss any of these points further.

Yours sincerely



Nick Fincham
Director of Strategy & Regulation

³ p.9 Consultation on self-supply licences, Ofwat April 2016

⁴ Clause 4, Water Resale Order 2006