

Retail Market Opening Programme
Ofwat
21 Bloomsbury Street
London
WC1B 3HF
via email to: retailmarketopening@ofwat.gsi.gov.uk

16th December 2016

Dear Ofwat,

Ref: Consultation on the Wholesale Retail Code

Thank you for giving Water Plus the opportunity to comment on the latest draft of the Wholesale Retail Code.

Overall, we are broadly supportive of the proposal. We have set out a few comments and observations over the next few pages which we believe will further refine the drafting to support the smooth functioning of the market.

If you would like to discuss any aspect of this response further, please do not hesitate to contact myself or a member of my team (see contact details below).

Yours faithfully,



Stève Hervouet
Head of Regulation

Contacts

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Consultation Questions

We would be grateful for comments on the issues raised in Sections 3.1 to 3.3 and the associated drafting together in particular whether the WRC is in a form ready to be issued by Ofwat and whether the draft Designation Document is acceptable. In addition, we would welcome any suggested improvements to the WRC for the purposes of Market Opening. The WRC comprises many individual documents and to aid our consideration of your comments or suggested drafting it would be helpful if you could ensure that you make a full reference to the document where you are making a comment or suggesting a change. In addition, you should explain the rationale for the comment or suggested change together with your view on whether the change is needed prior to Market Opening and why. You should also explain why this change has not been raised earlier to the ICP or indeed whether this change has already been considered by the ICP.

1. Wholesale Contract Schedule 1 Part 2: Business Terms Part E Default and Termination

The time periods associated with a retailer going into default are very tight and the implications are extremely severe whereby a retailer would be in default with all wholesalers in the market and in effect excluded from the market.

Under the current code, in the event of a genuine mistake or minor cash flow error leading to a default, this could have an unwarranted domino effect, with a retailer effectively being excluded from the market for defaulting which would be a significant shock to the stable working of the market.

It was discussed at the Ofwat working group on credit terms the need to balance any additional credit risk being added to wholesalers against the extremely serious implications for a retailer of missing the exact collateral requirements for one single wholesaler due to a minor forecasting or processes issue.

We would welcome some further clarification on the controls that would ensure retailers are not unduly impacted in such a way. For example by giving further consideration to wholesalers acting reasonably (e.g. providing notice and working with retailer to rectify the position).

2. Wholesale Contract Schedule 1 Part 2: Business Terms Schedule 2E Unsecured Credit Allowance

During the workshop process to agree the Credit Terms change proposal submitted to the ICP, it was discussed and a common position found that retailers could use investment grade Parent Company Guarantees to access unsecured credit i.e. investment grade PCG should automatically generate 40% unsecured credit allowance.

This was confirmed in the Ofwat decision document "Credit terms between wholesalers and retailers in the new retail market" – appendix 2.

However, there is no explicit reference to this in the current draft Wholesale Retail Codes. This appears to be an omission.

Our concern is that unless this appears in the Codes on market opening, it could delay the market becoming fully active while negotiations are held between wholesalers and retailers. In addition to this option being potentially time consuming, the lack of clear guidance in the WRC could lead to different wholesalers making differing interpretations.

We note that the inclusion of the "negotiated option" in Schedule 3 of the Business Terms: Alternative Eligible Credit Support allows parties to agree arrangements to suit their specific needs, and could allow unsecured credit based on PCG to be agreed. Also, the inclusion of credit scores in the codes rather than ratings reflects that many retailers will not have a rating yet. This may be why the requirement has been overlooked in the final change proposal presented to by the ICP. However, although these options could still potentially achieve the desired outcome for retailers, we do not believe that either of these options will address our concerns fully.

We do not believe that our proposal constitutes a material change to the Codes, but merely aligns the code to Ofwat's policy document and provides additional clarity to de-risk preparations for putting place the appropriate collateral ahead of market opening.

If necessary we will raise as a change through the ICP, although there are no implications to the programme and our suggestion should not delay market opening.

3. Format of the proposed Wholesale Contract and the associated derogations process in Schedule 4 of the proposed contract

We welcome the incorporation of the Wholesale Retail Code into the Wholesale Contract as this makes the responsibilities between the parties clearer. However, if the Code is applied rigidly and contractually, we envisage situations whereby both wholesaler and retailer wish to agree a particular protocol which differs from the code, which could be in the best interests of customers, but applying the code rigidly would negate this benefit. Some flexibility around the codes will benefit the market.

We consider that the Wholesale Contract and associated code should serve as a model, default contract and, provided any deviations are agreed using a suitable process, it should provide customers with the best possible service without contravening the principles of a level playing field.

Our observation is that there does not appear to be a clear process to reflect minor changes aimed at ensuring the best possible customer service. The interim and enduring codes panels will be able to implement changes applicable to all, however, the situations considered here are more likely to apply to specific circumstances or even by customer.

The draft derogations process is targeted at lightening the compliance burden on small companies such as insets, small retailers and wholesalers. We would suggest that it could also provide the vehicle for minor, mutually agreed modifications where it benefits the customer experience and smooth functioning of the market.

4. WRC and CMOS functionality

There will be a disconnect between the WRC and CMOS functionality on first day of market opening, as some Ofwat-approved change proposals will not have been implemented in time for market opening.

We would welcome further clarity on how Ofwat proposes to address this issue. For example, will a blanket derogation apply until consistency is achieved between CMOS and the wholesale retail code?