

Ofwat
Centre City Tower
7 Hill Street
Birmingham
B5 4UA

29th October 2021

Emailed to: covidbusinessretailmarket@ofwat.gov.uk

Reference: Proposals to deal with un-invoiced Wholesaler charges in the event of an unplanned Retailer exit

Dear Sir/Madam,

Thank you for providing us with an opportunity to respond to Ofwat's proposals to deal with un-invoiced Wholesaler charges in the event of an unplanned Retailer exit. On balance we believe that the two listed areas of change are broadly sensible and tackle the specific issues highlighted within the change proposal in a proportionate manner.

We believe that the impact of these proposals on Retailers within the market place will be minimal whilst such Retailers continue to trade. That said, we remain concerned that these proposals are solely focussed on mitigating the impact of an unplanned Retailer exit without tackling the systemic causes of such events.

It is our view that the levels of 'risk' within the NHH Retail Market are currently unbalanced, with Retailers facing significantly greater risk and unexpected cost than originally considered at market opening. At the existing levels of margin within the competitive market, we are concerned that the sector is not currently sustainable and the threat of systemic Retailer failure is not just contributing to additional Wholesaler risk but may also lead to significant customer dissatisfaction. The specifically listed changes appear sensible, however a holistic review of 'risk' in the market may be required to ensure that effective competition is promoted. We are keen to engage with Ofwat on the upcoming REC review alongside other potential opportunities to ensure the long term health and sustainability of the NHH Market, protecting the interests of both the market participants and the wider customer base.

We would be more than happy to discuss these points in more detail, so please do not hesitate to contact me or someone from the Legal and Regulation team (contact details below or simply email regulation@water-plus.co.uk).

Yours sincerely,

David Morris

Regulation Analyst



Appendix 1: Consultation Questions

Proposed changes to the price control arrangements and the reconciliation rulebook

1. Does our proposed approach deliver the following policy aim in a way that is consistent with our statutory duties?

"in the event of a Retailer's unplanned exit from the business retail market, a Wholesaler should be able to recover relevant un-invoiced revenues for services that the Wholesaler has provided to that Retailer - but were not due for invoicing or had not been invoiced - at the point of Retailer failure."

It is our view that the proposed changes to the price control arrangements and the reconciliation rulebook deliver against this policy aim, with limited additional 'shock' or negative impact on the wider market. This change appears consistent with Ofwat's statutory duties, in particular in the areas of ensuring Water Company resilience and ability to finance.

There is also potential that the approach to ensure that Water Companies are reasonably able to recover 'un-invoiced Wholesaler Charges' may support further development in promoting effective competition. This change should lead to greater Wholesaler confidence, security and certainty within the NHH Market and as such, alongside additional Ofwat policy and guidance, may create further opportunities for Wholesaler support for Retailers within the marketplace.

2. Do you agree that it is appropriate to apply company specific Totex cost sharing rates to amounts relating to un-invoiced revenue to be recovered via the RFI mechanism in the event of a Retailer failure?

We do not have any specific views on the approach to apply company specific Totex cost sharing rates within the RFI mechanism in the event of a Retailer failure.

3. Do you have views that alternative approaches may be more effective or straightforward to implement?

We do not currently have any views on potential alternatives to the existing approach, which we believe is proportionate.

Proposed changes to the WRC

4. Do you agree with the proposed change to the WRC? Please explain your answer.

Overall, we believe that the proposed changes to the WRC are broadly sensible and proportionate to address the specific issue identified. We would note the potential for an expanded definition to lead to a marginal increase in the difficulty (and cost) to obtain third party Credit Support, however we do not believe that this risk is prohibitive to the change..

Though we support the proposed change to the WRC to mitigate the potential broader implications of an unplanned Retailer exit, it is our view this change alone will be insufficient to

address the issues in this area. We believe that it will be critical to also tackle the wider issues and areas of unsustainability within the NHH Retail Market that continue to contribute to the risk of systemic Retailer failure. We encourage Ofwat to continue promoting effective Wholesaler engagement with the market to address these causes of market frictions, and are keen to engage on the structural issues within the market as part of the upcoming “Retail Exit Code Review” next year.

5. Do you agree with proposed amendments to the legal drafting? Please explain your answer

We agree with the proposed amendments to the legal drafting, and believe that this drafting delivers the intent of Ofwat’s proposal.

6. Do you agree that the proposed change to the WRC furthers the objectives and principles set out in WRC Schedule 1, as described in section 4 above?

We broadly agree that the proposed change to the WRC furthers the objectives and principles set out in WRC Schedule 1, with particular reference to increased levels of ‘Transparency and Clarity’ as well as ‘Efficiency’. We agree that the change does indeed promote the “Continued development and sustainment of an effective market” within the scope of the issue considered, namely in the event of an unplanned retailer exit. That said, it is our view that this change alone will not address the wider sustainability issues that drive an additional need for such considerations within a truly effective market place.