

04 March 2016

Dear Ofwat,

Deemed contracts: policy conclusions and consultation on the draft Retail Exit Code

We welcome the opportunity to comment on the draft interim supply code.

We agree with the policy conclusions that customers should be no worse off immediately following a retail exit than they were prior to the retail exit and that, in order to effect this policy, the acquiring WSSL should offer the relevant retail tariff applicable to customers at the point of transfer.

We note that Ofwat have concluded that there should be no presumption that these price protections for customers at the point of retail exit will continue indefinitely as the market develops. We support the de-regulation of this pricing protection, as the market should determine the applicable price terms.

We agree with the proposal that, in all cases, prices charged to customers on deemed contracts should not be unduly onerous, and welcome the clarity provided that this means prices should be reasonable and offer no undue preference or discrimination.

However we also consider that:

- The price protection for customers on a deemed contract as a result of a retail exit, and for SME customers on a deemed contract after a retail exit should not continue indefinitely and should be reviewed as the market develops;
- With regard to back billing, the Retail Exit Code should not prevent exiting undertakers and acquiring retailers from being able to agree the terms on which outstanding debt at the point of exit may be collected. There is also a potential timing issue with regards to the resolution of some elements of the code including back-billing and customer protection; and
- To support good governance, we consider that the Code Panel has a role in agreeing and determining any modifications to the Retail Exit Code.

Our comments relate principally to the above points and are set out below:

Price terms

- **Price terms on retail exit.** We note that, immediately following a retail exit by the incumbent, Ofwat has concluded that customers should be charged no more than the tariff that they would have been charged by their (exited) statutory undertaker, and that this principle should apply as a maximum that WSSLs can charge to customers. We agree with this principle but consider that these price protections should not continue indefinitely as the market develops.
- **Price terms post exit.** We note Ofwat's proposal that SME customers on a deemed contract in circumstances other than as a result of a retail exit should benefit from the same price protection as customers on a deemed contract as a result of an exit. Whilst we agree with Ofwat's conclusion that this price protection does not need to be extended to non-SME customers, we consider that this amounts to a regulated tariff that the retailer will be required to offer to SMEs indefinitely. We support the de-regulation of pricing and consider that the market should determine the applicable price terms, therefore we consider that Ofwat should review whether this price protection is still necessary as part of the next non-household price control.

Non-price terms

- **Back billing.** We note that Ofwat is continuing to consider this issue in connection with work on customer protection. Our strong preference is that the Retail Exit Code should not prevent exiting undertakers and acquiring retailers from being able to agree terms on the transfer of liabilities and how outstanding debt at the point of exit may be collected. We would welcome clarity on Ofwat's proposals as soon as possible.
- **Customer objections.** In our response to the consultation, Customer Protection for the non-household retail market, we stated that we consider that the rights for customers on deemed contracts needs to be considered and we would welcome a standard objections protocol for customers.

This could potentially be picked up as part of customer complaint management and dispute resolution and we would welcome clarification of what Ofwat considers to be the most appropriate method to manage and resolve such complaints.

- **Timing.** We note that there are several key decisions still required which relate to the ongoing development of the Customer Protection Code, including back-billing. We would welcome visibility of how these policy issues are developing as soon as possible to support the development of wholesale and retail processes for market opening.

Governance of the Retail Exit Code

- **Governance of the code.** We note that Ofwat will be obliged to carry out periodic reviews of the Retail Exit Code and, if appropriate, issue a revised code. Our strong

preference is that the Code Panel also has a role in agreeing and determining any modifications to the Retail Exit Code, as that is the body being created for the purpose of keeping all relevant codes under review, as part of the market architecture process. We believe that this approach would support and ensure good governance.

We would be pleased to provide more information about any point made in our response.

Yours sincerely

A handwritten signature in black ink, appearing to read "A J Ballance".

Dr Tony Ballance
Director, Strategy & Regulation