

Disputes Committee Findings on DIS0031

Introduction

The Disputes Committee (DC) convened a closed session within DC10 on 25 Aug 21 to hear Elis UK Ltd (ELIS), a self-supply retailer, and South West Water Limited (SWW), a water and sewerage wholesaler, present their evidence in support of their positions on Dispute DIS0031. In this dispute, ELIS asserted that SWW failed to comply with Schedule 3 of the Business Terms: Alternative Eligible Credit Support, in that they “failed in their consideration to develop and introduce a credit offering that is in alignment with what Ofwat indicated to be notable examples of best practice.”

Considerations

[Schedule 3 of the Business Terms: Alternative Eligible Credit Support](#) requires that where a Contracting Retailer seeks to establish arrangements for Alternative Eligible Credit Support with the Contracting Wholesaler, the Contracting Wholesaler shall be obliged to give due and proper consideration to such proposals. Both parties shall be obliged, in relation to the proposals:

- (a) to act reasonably towards one another and without unreasonably delay, and
- (b) to negotiate in good faith with each other

in accordance with the principles of Non-Discrimination and No Barriers to Entry set out in Schedule 1 to the Wholesale Contract.

The terms “Non-Discrimination” and “barrier to entry” are defined in [Wholesale Contract Schedule 1: Part 1: Objectives, Principles and Definitions](#)

Non-Discrimination definition. “The Wholesale Retail Code and arrangements established by or under the Wholesale Contract shall not unduly discriminate, or create undue discrimination, between any existing or prospective Parties or group of such Parties

“Barrier to Entry” definition. “The Wholesale Retail Code and arrangements established by or under the Wholesale Contract shall, wherever appropriate, promote effective competition and the removal of, and shall not introduce unnecessary barriers to... efficient market entry, expansion and exit”

Findings

In the case of non-trading disputes the DC’s remit is to assess whether there has been a breach of the codes. DIS0031 presented a number of factors outside the code, which could not be addressed within the DC deliberation. The DC was, however, able to reach a unanimous decision regarding DIS0031 and found that SWW had not breached Schedule 3 of the Business Terms on the basis that the code contains no obligation to reach agreement. The DC noted that SWW had recently documented an agreement

for Alternative Eligible Credit Support with ELIS, which was signed by both parties on 23rd June 2021 and posted on the [Mosl website](#).

This decision has been based solely on the wording of the codes set out above, and does not extend to any other alleged issues regarding the negotiations around alternative credit support that were raised at the hearing, but fell outside the remit of the DC. This finding does not preclude either party from pursuing alternative routes for resolution of those alleged issues that could not be addressed, if they feel this is appropriate.