

Licensing and policy issues in relation to the opening of the non-household retail market – a consultation

Albion Water welcomes the opportunity to comment on the Licensing and Policy Issues outlined in the consultation. In the time available to make appropriate representations and with limited access to certain technical or legal resources (in common with a number of small companies) Albion has provided its responses to the consultation questions below. Text in italics is reproduced from the consultation document; Albion's responses are in plain text and issues that remain under consideration are highlighted in red text.

Throughout this consultation, we raise a number of questions, which we have summarised here. As well as responses to these specific questions, we welcome views from stakeholders on any of the issues raised in this consultation.

Albion was the first new entrant inset appointee (or NAV) to open up the water industry to competition in 1999. It remains at the forefront of delivering resilient, sustainable and innovative solutions to industrial users and new developments in England and Wales and has an exemplary track record with water industry regulators. Albion has also participated in (and supports) the development of retail competition, for example commenting on the market blueprint and earlier MAP versions during 2014 (see extracts below) and also serving on the Programme Delivery Board. Despite this commitment it has not been possible to fully engage in the many groups and workshops that have mushroomed during this process.

Extracts from previous submissions (during 2014):

'It is essential that the handling of NAVs is consistent with Government ambitions relating to competition and innovation, does not lead to an excessive cost burden on the smaller market participants and is proportional to the scale of desired outcomes.'

'A specific impact assessment on existing NAV competition due to added market operation costs is desirable. There is a danger that market reform will harm NAV competition ...'

'Potentially there's a need for a dispensation due to the imposed cost burden being disproportional to the limited NAV business element.'

'... there appears to have been little attempt to tackle certain market engagement/cost affordability issues that particularly affect existing NAV competition; indeed my concerns raised during the earlier consultation are heightened rather than allayed.'

The fact remains that Albion supports retail market opening on the basis that engaging with the market is not detrimental to existing competition, that is to say level playing field requirements and market operating systems, conditions and procedures must be proportionate, simple and affordable.

Consultation questions

Q1 Do you agree with the proposal to have separate licences covering water and wastewater retail?

Yes

If not, please explain how you envisage that a single licence for water and wastewater would differ?

N/A

Q2 Do you agree with the proposed amendments to standard conditions for the new water supply and sewerage service licence (WSSL)?

See Q3

Q3 Do you think any of the proposed amendments listed in Table 3 are non-routine and require additional discussion?

At first glance, the proposals appear to be non-controversial

If so, why?

N/A

Q4 Do you agree with the proposed approach to maintaining customer protection in the future WSSL?

It is not clear how the proposals would support customer protection without greater clarity over defining 'material change' or the required audit trail.

Q5 Do you agree with the proposed approach to Market Arrangements Code enablement?

Yes

Q6 Do you have any specific comments on the legal drafting?

No

Q7 Do you agree with the proposed approach to include requirements on arm's length transactions and non-discrimination?

More detail required but broadly supportive

Q8 Do you have any other comments on our proposed conditions in this area?

No

Q9 Do you have any other observations about our proposals on changes to the standard conditions for the new Water Supply Licence?

No

Q10 Are there any areas not covered in the proposals in which you consider changes are required?

Under consideration

Q11 Do you agree with our proposals for the conditions within Table 5?

Please respond separately on each of the three Appointment conditions (Q, G and I) discussed.

Under consideration

Q12 Do you agree with our proposals for the conditions within Section 5.1.2 on equivalence? Please respond separately on each of the eight conditions discussed.

Broadly supportive

Q13 Do you agree with the draft condition set out in Appendix A to enable the Market Arrangements Code? Are there any reasons why this condition should differ between the Appointment and the standard conditions of the WSSL?

Under consideration

Q14 What are your views on the proposed 'stapling' condition set out in Appendix B requiring the company to adhere to the Wholesale Retail Code in its interactions with its own retail business? Does the proposed condition work alongside Schedule 8 of the Market Arrangements Code?

Broadly supportive

Q15 Do you consider that the proposals will achieve the objective of equivalence, with the same obligations and opportunities for all retailers? If not, what additional suggestions do you have?

Yes but consideration must be given to proportionality in terms of market engagement and small companies – there is a case for a de-minimis position/route

Q16 Do you have any other observations about our proposals on changes to the conditions for the Instruments of Appointment?

No

Q17 Are there any areas not covered in the proposals in which you consider that changes are required?

Not at present

Q18 Are there any areas in your Appointment in which you think differences from the examples used will require detailed consideration in future work?

Under consideration

Q19 Do you agree that we should retain the three basic elements of financial stability, managerial competency and technical competency in assessing future licence applications?

Yes

Q20 Do you agree that gaining a retail future WSSL licence should be conditional on successfully completing market accession testing? Are there any aspects of the licensing process that could be further simplified to avoid duplication/overlap across the two processes?

Under consideration, dependent on proportionality and entry barriers

Q21 Do you have any comments on the proposal that licence applications for the future market should include the provision of a completed certificate of adequacy?

Yes, depending on the nature of the (future) certificate

Q22 Do you have any comments about the coverage of wastewater in the licence application process and the role played by the Environment Agency?

No

Q23 Do you consider that the role of any sponsor should be maintained, limited or removed entirely? What are your reasons for this view?

Under consideration

Q24 Do you have any comments about the proposals to include coverage of customer facing systems in the managerial competency tests?

Yes, it should be included but not an excessive burden - it is important to strike the right balance to protect market confidence but avoid unnecessary barriers to entry associated with the competency tests.

Q25 Do you agree that the scale considerations are better dealt with via the certificate of adequacy rather than additional testing in the licence application process?

Yes

Q26 Do you agree with our proposed transition approach for current retail only WSL?

Yes

Q27 Do you agree with our proposed approach to transition current combined supply WSL?

Yes

Q28 Do you agree with our proposed approach for creating self-supply licences?

Yes

Q29 Do you agree that there should be a new condition in current licences and Instruments of Appointment to underpin the required preparations?

No, not before the details of a proportionate market engagement route for NAVs and small companies has been discussed and established.

Q30 If you agree that there should be a condition, should it cover both a general obligation and a specific link to a formal transition plan?

Once a condition is appropriate (see answer to Q29) then both a general obligation and a formal transition plan could be covered.

Q31 Are there any additional provisions that you think it would be helpful to include in a licence condition on company readiness or any other comments/concerns you would make?

See answer to Q29 – the impact on small companies (in both financial and resource terms) must be appropriate with a low barrier to market participation and appropriate data flows.

This may require simplified 'small (wholesale) company' market data rules.

Q32 Do you consider that implementing an auction style allocation process similar to the one that Ofgem has adopted ahead of a backstop allocation process would be the best approach to protecting customers in the event of the failure of a retailer?

Broadly supportive

Q33 *Do you have any suggestions about the best approach to ensuring that the new market arrangements are proportionate for a) smaller wholesale companies and b) small retailers.*
As previously stated in this consultation response, the resources burden placed on NAVs to engage with the market must be proportionate, simple and affordable. This is required to protect existing inset competition and to reduce the cost per non-household customer (or indeed the cost spread over all non-household and household customers) to a minimum. To achieve this full use of appropriate derogations must be used in addition to appropriate data flows, data formats and market charges both at market opening and into the future. A further workshop would be helpful to establish appropriate arrangements for small companies.

Q34 *Do you have any suggestions about the best approach for companies operating wholly or mainly in Wales?*

The outcome of proportionate new market arrangements (see answer to Q33) should be appropriate for companies operating mainly in Wales

Q35 *Do you have any comments about the circumstances in which a retail supplier should be able to opt out of Supplier of First Resort ('SoFR') arrangements?*

No

Q36 *Do you agree with our proposed approach for the developer services market and the related process proposed within MAP3?*

Under consideration

Q37 *Do you agree with our assessment of the interactions between the various parties?*

Broadly, yes

Q38 *Do you agree with principle that Special Agreements should be contestable and the current thinking on the details of the approach outlined in section 9.2.5?*

Under consideration

Q39 *Do you agree with the principle that there should be early publication of wholesale charges and the current thinking on the details of the approach outlined in section 9.3?*

Yes

Q40 *Do you agree that wholesalers should only levy charges that are in their wholesale charges schemes or published as special agreements?*

If not, please provide arguments as appropriate to support your position.

Under consideration

Q41 *Do you agree with our proposed approach to implement these licence changes?*

If not, how should we go about making these changes?

Yes