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

Consultation Questions

Q1 Do you agree with the proposal to have separate licences covering water and wastewater retail? If not, please explain how you envisage that a single licence for water and wastewater would differ?

Yes

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

Yes.

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

No.

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

Yes

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

Yes, save for adding the obligation to comply with the MAC in to the Instrument of Appointment (the "Licence"). Breach of the Code provisions should be a matter to be dealt with under the MAC but not the Licence as well. Obliging water undertakers to be party to and so sign up to the MAC code delivers the objective of establishing the MAC code and its principles with all industry participants.

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

As mentioned in the reply to Q5, we would support two changes: one to para 1.1.1 so it reads "be a party to the MAC" ; and secondly to para 1.1.2 to "use its reasonable endeavours to take all steps to ensure … ". This last amendment would ensure that the obligation upon undertakers was considered reasonable rather than the current text which sets what could be seen as an impossibly high standard of obligation that they must use all their powers to achieve the objective set out in 1.1.2.

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

We suggest that the requirement that retailers agree to non-discrimination obligation with regard to related parties is reviewed within a defined period of say 18 months after market opening to check that is it still an appropriate balance of regulatory burden against benefit when such retailers are not expected to have characteristics of dominant players in competition law terms. In general, it is good practice to include sunset clauses where requirements may not be needed in the future.

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

No comments

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?

No

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.

No issues with approach to Condition Q, G, and I.

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.

No issues seen on any of the 8 changes described in summary form.

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?

Please replies to Q5 and Q6. Having same terms for WSSL and Licence is sensible aim.

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?

We recognise this is somewhat artificial and would suggest that the timing impact of this condition be clarified as it should only bite as from market opening. We express no view as to interaction with Sch 8.

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.

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?

No.

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

No.

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?

Yes.

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.

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 comment.

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

We have no strong views on this question.

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

We agree with the principle of demonstrating managerial competency for customer facing systems but are not clear how this can be consistently demonstrated by each company.

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, we agree that an annual assessment of adequacy is a more appropriate approach.

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?

We have no strong opinion but broadly agree.

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

We believe the assurance provided through the Open Water programme will be sufficient. If there are any further changes this can be accommodated through the programme and amending this framework.

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?

NA – see Q29

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?

NA – see Q29

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?

We agree an auction could provide a better customer outcome and therefore support on this basis.

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.

No comment.

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

No comment.

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?

We consider that any retailer should be able to opt out of the SoFR without providing a reason. This is because any statement regarding the reason for opting out could place the retailer at a competitive disadvantage by revealing its strategy.

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

We believe that there is still uncertainty concerning the application of MAP3 to developer services in general.

1.Mains not included

Whilst almost the whole of the proposals refer to connections for NHH premises, part of the section dealing with developers apparently moves into the provision of mains in general. These mains could ultimately supply HH, NHH or mixed developments. In particular, Form A/01, whilst purporting to be used by applicants for service connections, poses questions which appear to relate to the provision of infrastructure for sites, which would include mains, either off-site or on-site. We do not believe it

would be appropriate to try to include the provision of mains within processes intended to open up the market for service connections to NHH premises. The processes for mains requisition and connections are covered by separate sections of the Water Act. We consider that it is important that any proposals for introducing wholesale/retail separation into this area focus clearly on the processes under the act which they relate to. Our view is that a better approach would be to focus solely on connections and not mains.

2. Keeping applications for connections simple serves customers best

We do not consider that a pre-application enquiry is ever necessary for a single connection. We would expect an applicant to make an application, and we would consider the effects of that application upon our network at that time, based on the information provided on the application form.

3. Building water

Building water takes up a large part of the various processes. Whilst acknowledging that building water is not water for HH use, we believe that connections for its provision should, nevertheless, be excluded from the market in all cases except those where such a supply is to be subsequently adopted for a permanent NHH use. This could be achieved by excluding temporary supplies from the market, and/or by excluding those connections which are ultimately intended to supply HH premises.

We support Ofwat's stated aim of not increasing the complexity or cost for developers requiring connections, but the inclusion of building water within the scope of competition risks doing both of these things. It may, however, be reasonable to include connections for building water which will eventually be taken over as permanent supplies to NHH premises.

Our reasoning is shaped by the reflection that the revenue deriving from a building water supply generally does not exceed £10 per property. We cannot know for certain but we question whether such a supply would be of interest to a Retailer owing to the costs and return involved. Designing and building an IT system to track large number of temporary and potentially low value supplies might serve to inflate costs disproportionately for the Market Operator.

An example of a typical small scale development is a householder building a house next door/in his garden or converting an existing property into two or more dwellings. This person currently can use the existing supply to the existing premises for his building water without even approaching us (although if that supply is not already metered we would prefer it if a meter could be fitted prior to development taking place). Once the building or conversion work has been completed he would apply to us for the additional connection(s) needed for the new dwelling(s).

Under the Retail Market proposals the same developer would have to approach a Retailer to apply for a building water supply, which would be registered in the market. This could become complicated if the supply in question is also to serve the existing dwelling. Once completed the builder would approach his Retailer to have the building water supply deregistered and also apply to us (or, theoretically, to an SLO) for his new domestic connection.

4. Our developing customers

We have tried to test the effect of Open Water's proposals on all the "developers" we deal with. The vast majority of people applying for connections, including building water, are not national, or even regional, developers, but are small scale builders and individuals. We are concerned to keep this process as simple and cost efficient for these people. The introduction of the connection request, the use of a retailer, associated charges risks bringing more cost and complexity which could be avoided entirely if temporary supplies of building water were to be excluded from the market.

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

The proposed approach for the way the different parties should interact appears to differ from that proposed and agreed with Ofwat in our commitments under the Competition Act 2006. In those, an SLO is treated like any other retailer and interacts directly with the wholesale arm of developer services, whereas the developer deals with our "customer-facing developer services", namely the retail arm of developer services. In Figure 6 both the developer and the SLO are shown interacting with the retail arm of developer services. If we are to follow this approach we would need to discuss the terms of these commitments with the relevant parties at Ofwat with a view to requesting that we be allowed to amend them to comply with the latest proposal.

Also in Figure 6 we are unsure as to what organisations would be termed an "Other third party".

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?

Yes we agree they should be contestable.

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?

We consider that publication of indicative wholesale charges in July preceding the charging year is too early, and it would be more appropriate to delay this requirement to late Autumn.

Earlier publication creates more scope for change in the tariffs, due to the impact of changes in customer numbers and associated forecast demand. There is also greater scope for movement in RPI by using an earlier forecast.

Calculation of indicative charges for July publication would also increase the regulatory burden on companies as it would coincide with the timetable for collation and audit of annual performance and financial information.

We consider that publication of indicative charges in October or November would still provide a sufficient time period for retailers to develop their tariff offerings.

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.

Whilst in the main we consider that wholesalers would only look to levy charges that are published in charges schemes or as special agreements, to make this a rule would be unnecessarily restrictive.

There may be events during the year following the publication of charges schemes which necessitate implementation of a new charge, and it is desirable that the flexibility to do so should be retained. A requirement for any such new charge to be first approved by Ofwat before implementation may allow for a flexible approach to be maintained whilst also providing regulatory oversight.

Q41 Do you agree with our proposed approach to implement these licence changes? If not, how should we go about making these changes?

We believe that the proposed approach can be improved significantly without risking the timetable by making two changes:

1. Reuse the practice most recently adopted by Ofwat on licence changes and consult widely on a draft licence change so that it is to all intent and purposes agreed before issuing a section 13 consultation notice in to the public domain. This stance should help minimise any conflict and avoid any negative press.

2. This might not be reflected in this consultation text and be on the stakeholder agenda instead but given the critical importance the Instrument of Appointment has for water undertakers , their lenders and shareholders, these changes are best signalled well in advance. That would allow this key group and their advisers chance to consider the changes and reflect on them. These bodies would include the credit rating agencies as well. One possible approach to help explain the changes and reassure all parties of the impact being designed only to implement the changes necessary for the new market would be to supply an external legal opinion on the changes.