



Retail Licencing
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Dear Sir

PRT response to Consultation on Ofwat's proposed licensing and policy issues in relation to the opening of the non-household retail market

Thank you for the opportunity to respond to the above consultation which was published on 23 June 2015. The Regulation Manager attended the workshop held on 7 July, which has helped us understand further the thoughts behind many of the issues raised in the consultation.

Firstly we wish to acknowledge the volume of thinking and work that has been undertaken thus far by Ofwat and other organisations to prepare for a market in water and wastewater retail services for non-household customers.

There are a large number of issues that need to be addressed to ensure that we have an effective market in operation from April 2017. Whilst the policy decisions will affect the Company to a greater or lesser degree, we appreciate that it is necessary for Ofwat to propose options. We have not looked at the subtleties of each proposal but feel that in general terms we support the recommendations in the consultation.

We note there are 41 specific questions in the consultation and have provided a comment against each of them as attached.

If you wish to discuss further, please do not hesitate to contact me.

Kind regards,

Neville Smith
Managing Director

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

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?

We support the proposal to have separate licences for water retail and wastewater retail. This will allow retailers flexibility in the activity they wish to focus upon.

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

We do not currently hold a WSL and thus does not have knowledge of the implications of the detail in such licences. Given these licences have evolved over time it appears appropriate to produce a new and standard licence reflecting the new market.

Q3 Do you think any of the proposed amendments listed in Table 2 are non-routine and require additional discussion? If so, why?

Whilst it is helpful to understand the evolution from the current WSL licence to the proposed licence we do not feel the need to go into more detail of the amendments.

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

We note the need for licensees to provide a Certificate of Adequacy akin to the current requirements under WSL licensing and more generally the Company to confirm it remains a going concern under Condition F of its licence. This appears a sensible requirement in ensuring customer protection.

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

Given experience in other industries who have introduced such markets, we support the approach of having an interim code panel who would recommend changes to Ofwat who in turn direct as to whether the modification should be in-acted. The governance arrangements are clearly important and those proposed appear appropriate.

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

We have not reviewed the legal drafting in detail at this stage. Our initial review does not raise any issues.

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

Whilst we acknowledge that it is important to ensure all retailers have confidence in the market and that transactions within incumbent organisations are therefore at arms-length, we currently have no estimates of the cost involved in fulfilling this requirement.

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

We also note and support the removal of the condition which prevents "in area" trading. This results in a level playing field for retailers of an incumbent.

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?

None

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.

Looking at each in turn:-

Condition Q - drought payments – the wholesaler will now make a payment to the relevant retailer. Agree.

Condition G – customer complaints and emergencies – revise condition G to relate only to household as obligations relating to the provision of information to non-household customers is covered in the wholesale retail code. Agree

With respect to the role CCWater and WATRS may have in any complaints process we would have thought this process was fully understood by all retailers and therefore best placed with them to act in the best interest of the customer rather than the wholesaler to inform the customer of the option.

Condition I – leakage - the wholesaler will now make a payment to the relevant retailer. Agree.

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.

We note and agree with the seven proposals listed in the table, which we have already commented upon already in this response. Further we note the removal of the need to produce Access Codes and the Customer Transfer Protocol and the change in the need to inform Ofwat ex ante if the relationship with a licensee changes.

There is also merit in explicitly showing the Ofwat licence fee for each non-household retailer.

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?

We note and generally agree with the conditions set out in Appendix A to enable the Market Arrangements Code.

We note the proposal that the certificate of adequacy is required on 1 April, i.e. at the start of the financial year. Typically boards and auditors would form such a judgement at the conclusion of the production of a set of annual accounts. The requirement for a 1 April statement may result in more cost overall to the business in that the date of accounts may need to be changed.

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 support the need for a new licence condition for an integrated undertaker.

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?

The proposals appear appropriate.

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?

None

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?

We support the continuation of this assessment criteria. It is in no-ones interest to allow organisations to participate in the market that do not meet these requirements.

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?

We agree that the granting of a WSSL licence should be conditional on being able to operate in the market and in particular interacting with the Market Operator.

We have no observation on further simplification of the process.

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?

We support the requirement for a certificate of adequacy before a licence is granted., As we noted in response to Q19 it is in no-ones interest to allow organisations to participate in the market that do not meet these requirements.

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

There is merit in ensuring that all retailers have sufficient knowledge of both the wholesale services of water and wastewater and as such the views of both the Environment Agency and Drinking Water Inspectorate would be supporting information to demonstrate managerial competency.

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

In our current situation, we do not know who would be such a sponsor given a sponsor cannot be an undertaker if the applicant is an associate of the undertaker.

Further as noted in the consultation there is no comeback on the sponsor given they will not be regulated by Ofwat.

On balance we would remove this requirement.

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

We concur with the view that retailers who provide poor service will most likely lose it customers. However instances of poor service are likely to impact on the industry as a whole and therefore we support the proposal that Ofwat will test the ability of the retailer re customer facing systems in the tests for managerial competencies.

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?

We agree that the annual certificate of adequacy is a more timely and appropriate process to address issues relating to scale.

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

We believe that given the proposed market feels very different to the current WSL current licence retail holders should apply. We note the simplification of the process for current WSL licence holders, which appears appropriate.

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

As noted in the consultation the activity related to combined licences has been low, but until an upstream market has been developed the option of a third party requesting common carriage exists and should be allowed. Therefore the combined WSL will need to be revised to only reflect the non-retail elements.

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

We note the discussion that a customer may also wish to become its own retailer and the elements of the proposed WSSL licences which apply in this situation appear sensible.

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

Whilst there is much comment that there is not a need for a licence condition to ensure the company is ready for market opening, there is potentially merit in having such a condition in order to demonstrate to other stakeholders (other than incumbents) that this obligation will be delivered.

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?

Given our view that this supports communication with external stakeholders, a general obligation seems appropriate. However Boards will most likely want to understand what such an obligation actually means and so the link to the transition plan may be of more value.

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?

None

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 have no views on the merits of either an auction or an allocation process in the event of a failure of a retailer. Clearly there needs to be a process both in terms of the customer and the wholesaler. The process needs to be clear when the failure has occurred and who is liable to pay wholesale charges before the new retailer is established.

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.

This is not an easy issue to resolve. The obligations must apply equally to all market participants.

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

None

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 agree with the principle that if a retailer can demonstrate that its business strategy is to target either specific customer types or regions it should be able to opt out of SoFR arrangements.

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

We understand the rationale for the proposed approach for developer services in MAP3 and note that developers may choose to engage directly with a wholesaler or through an intermediary such as a retailer.

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

As noted at the workshop on 7 July the figure 6 could be redrawn so that the box entitled “incumbent customer facing service developer services” is the fourth option available to the developer and all four options interact with the wholesaler.

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?

Whilst PRT does not have any special agreements we agree in principle that they should be contestable. However by their very nature they are atypical arrangements between the company and a customer. The consultation states that a balance needs to be struck between the commercial interests of the incumbent and the customer.

The two pieces of information to be added to the Special Agreements Register appears sensible.

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 agree with the principle that there is merit in wholesalers publishing their tariffs early in the preceding year, recognising that an adjustment will be appropriate when the RPI is known in December. This will help retailers plan.

That said, this requirement will reduce the time period to consult with customers in general on both tariff proposals and indeed the structure of tariffs for the forthcoming year. Further in order to comply with the wholesale revenue cap a forecast of the denominators applicable to the charging year would need to be based on data some six months earlier (in April) than the current process implies. A key factor in establishing these denominators is the usage in the summer and the publication of the wholesale tariff pre summer would not allow summer usage in particular this to be taken into account.

Finally if the requirement is for wholesale tariffs to be published for year one, we should not forget the opportunity for companies to revise its default tariffs etc. next summer at a mini Price Review.

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.

Yes

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

We agree with the proposed approach for implementing the licence changes.