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Dear Christian

Consultation on licensing and policy issues in relation to the opening of the non-household retail market

Thank you for the opportunity to respond to the consultation on licensing and policy issues in relation to the opening of the non-household retail market.

The issues discussed in this consultation are an important step forward in preparing the industry for the opening of the non-household retail market. We are committed to this journey and look forward to working with Ofwat to ensure that the framework is appropriate and delivers the expected customer benefits.

We set out below a summary of our views. Detailed responses to the specified consultation questions and some further comments are set out in the appendix.

Degree of separation between non-household and wholesale

We agree that retail businesses that remain part of existing undertakers should have the same obligations and opportunities as future WSSL retail licensees. We also agree with the proposed approach to include requirements for arm's length transactions and no 'undue' discrimination. However, we need to ensure that these requirements extend only to what is reasonable for effective competition to develop and do not result in the introduction of inefficient new entrants, or remove the existing efficiencies that our customers benefit from, and that Ofwat has factored into the retail price controls at PR14.

In particular, although we agree that the Appointee's wholesale and retail businesses should behave as if they were separate legal entities, we do not agree that they should carry out their activities as if they were *unrelated* legal entities. This means that the wholesale and retail businesses should be able to share common services (e.g. electricity supplies, building insurance, in house legal teams, corporate services, procurement portals, etc.), so long as arm's length costs are charged to the retail businesses.

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Furthermore, we note that the proposed amendments could be simplified to a simple requirement that all retailers and all wholesalers can only transact with each other at arm's length.

For further detail, please see our response to questions 7, 9 and 14.

Preparation for market opening

We agree that it is important that all trading parties take the steps necessary to prepare for market opening. A licence condition would be a means of achieving this, although it would need to be drafted carefully to avoid companies being exposed to unreasonable risks. In our view, it is important that responsibility and control are aligned, and any such new condition will have to ensure that it relates to matters within management control.

A general licence condition, which might include a requirement to take 'reasonable endeavours to be market ready', would provide appropriate incentives for companies to prepare for market opening, while reducing the risk of unnecessary expenditure (which would inevitably increase customer bills under the totex price control arrangements).

We are pleased that steps are being taken to address the governance issues identified in the baseline review. Nevertheless, we remain concerned that these are a work in progress and that at present governance and accountability for the market arrangements and their delivery remains uncertain and unclear. This increases the risk to the delivery of an appropriate market in the envisaged timescale.

For further detail, please see our response to questions 29, 30 and 31.

Treatment of Developer Services

It is our view that the Developer Services market arrangements proposed by MAP3 add unnecessary additional complexity and, therefore, additional cost to the provision of water and wastewater connection services, where there is already a competitive market that is known and understood by participants.
It would be simpler and more efficient for the provision of connection infrastructure to be distinguished from the provision of the water and wastewater service and excluded from the complexities of the MAP3 regime altogether. This would allow the retention of the current flexibility for developers to purchase new connection services either through the retailer or the wholesaler, or from a self-lay organisation.

In addition, there is an apparent inconsistency between defining some of the developer services activity as retail (e.g. as was the case in AMP6 price settlements PR14), when the obligations to connect continue to reside with the incumbent undertakers after retail exit. It will be important that this point is addressed to facilitate the retail exit proposals.

For further detail, please see our response to questions 36 and 37.

Supplier of the Last Resort

We support the proposed auction approach. An auction style approach has been seen to work well in other utility markets and seems to be a practical approach that should provide a good level of protection to customers in the event of the failure of a retailer. The detail on how this is implemented, and the interaction with Supplier of First Resort will be important.

For further detail, please see our response to question 32.

Indicative Wholesale charges

Whilst we agree that it would be useful for market participants to have an early view of indicative wholesale charges, we are concerned that the consultation documents suggest that the only change between the indicative charges and final charges will be the result of changes in RPI expectations. Wholesalers are under an incentive (WRFIM) to ensure collected revenue is as close to forecast revenue as possible. To achieve this, wholesalers will need to take account of new information in respect of the number of customers and the type of customer (e.g. metered or unmetered).

In addition, in our particular case, it is currently envisaged that the arrangements to collect the Thames Tideway Tunnel Infrastructure Provider ("TTT IP") revenue provide for the TTT IP to provide an estimate of the IP revenue requirement at various stages between August and December, so indicative prices produced in July would be unable to take this into account.

There will, therefore, be a number of reasons why the final tariffs will vary from the indicative tariffs.

For further detail, please see our response to question 39.

Proposed approach to implementing licence changes

We agree with Ofwat's proposal to seek to agree the changes through a consensual route, before considering the use of section 55 powers enabled under Water Act 2014. Continued ongoing engagement on key issues will be central to the success of this approach.

For further detail, please see our response to question 41.

Payment and credit terms

We welcome Ofwat's acknowledgement that the MAP2 credit and payment terms could have resulted in additional costs for the industry and the move to an expanded menu of credit arrangements which will be considered by the interim code panel.

I trust that you will find these comments helpful. If you would like to discuss them further, please do not hesitate to get in touch.

Yours sincerely

Nick Fincham
Director of Strategy & Regulation

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Appendix 1: Thames Water's detailed response to Ofwat's consultation on licencing and policy issues in relation to the opening of the non-household retail market

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 we agree. This approach aligns with that adopted in Scotland and appears to be sensible.

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

At a high level yes, although we have one specific comment with respect to Condition 7(1).

Condition 7(1) provides that: *"The Licensee shall carry on the activities authorised by its Licence in a manner which does not impair or put at risk the proper, efficient and economical performance by any relevant undertaker of its functions."*

We support the concept embodied within this Condition, and note that Ofwat set the PR14 retail price controls and default tariffs to take account of the existing economies of scale and scope in undertakers' retail businesses (including the ability to share offices, central functions and common services such as electricity supplies, building insurance, in house legal teams, corporate services, procurement portals). To avoid unnecessary price increases for customers, it is important, therefore, that these economies and efficiencies in retail businesses, and indeed wholesale businesses, can be preserved.

On a more detailed point, we were unclear why the duty would only apply to a "relevant" undertaker, and not to all undertakers. It seems unnecessary to include a test of "relevancy" in the condition, and we believe this test should be removed.

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

We agree that the proposed amendments are routine in nature.

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

We agree in principle that a 'certificate of adequacy' would provide assurance that holders of WSSL licences have made arrangements, and have the resources needed, to meet their statutory requirements and have insurance to support this. We look forward to further engagement, and the detailed drafting of the certificate, which will enable us to understand the full impact of this approach, and hence its suitability.

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

We agree that it is sensible to include a licence condition to facilitate adherence to the Market Arrangements Code.

We suggest that it is not necessary to include Clause 1.2. The MAC principles are set out in Schedule 1 of the MAC and Clause 1.1 obliges appointees and licensees to comply with the MAC, it seems unnecessary to also include the principles within Appointments and WSSLs.

We also suggest that it may be inadvisable to "hard code" a specific dated version of the MAC into the licence condition, as this could mean that a licence amendment would be required each time the MAC was updated. Instead, the Condition could, for example, refer to the version(s)[1] of the MAC in force from time to time.

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

Our comments are included below.

In reference to the phrase within Clause 1.1.2 "…*take all steps within its power*…", it is our view that this is an unduly high standard to test level of compliance against and we suggest that this should be amended to be "use reasonable steps…".

As noted above, we do not see the need for Clause 1.2 to be included in Appointments and WSSLs as this this could mean that a licence amendment would be required each time this aspect of the MAC was updated. It might be simpler if the licence cross-referred to the MAC. This would ensure the Code Panel have flexibility and discretion over changes to the modification process as market experience develops.

In general, we do not think there is a need to duplicate wording in the MAC within Appointments and WSSLs.

On a separate note, the MAC principles stated in the draft WSSL appear to be inconsistent with the MAC itself. For example, it is inevitable that a market code will (and should) act as a barrier to entry to companies that are unable to meet its requirements. If it is necessary to hard-code the MAC principles (which we doubt), Clause 1.2.1 (d) should at least include the word "undue", i.e. state that the MAC "should not create *undue* barriers to entry".

In addition, it was not clear to us that the upstream competition principle was appropriate in the licence as the MAC does not relate to upstream competition.

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

We agree that retail companies, which remain part of existing undertakers, should have the same obligations and opportunities as future WSSL retail licensees. We also agree with the proposed approach to include requirements for arm's length transactions and no 'undue' discrimination. However, we need to ensure that these requirements extend only to what is

[1] We note that it may be prudent to allow there to be a test version as well as a current version, hence the reference to versions.

reasonable for effective competition to develop, and do not result in the introduction of inefficient new entrants, the removal of existing efficiencies that our customers benefit from and that Ofwat factored into the retail price controls at PR14.

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

We do not have any other comments at present, though we have not yet had time to fully consider the impact of the changes in MAP4 published on 14 July 2015.

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

We note that the current drafting of Clause 8 ("Arm's length transactions") is more complex than may be necessary, using the separate terms: "*relevant undertaker*", "*relevant undertaker to which it is related*" and "*any other relevant undertaker*", and defining the meaning of "related" for the purposes of the clause. In our view, the proposed amendments could be simplified to a succinct requirement that all retailers and all wholesalers should only transact with each other at arm's length.

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

This will be clearer once further details emerge, and when we have had time to fully consider the impact of the changes in MAP4 published on 14 July 2015.

Q11. Do you agree with our proposals for the conditions within Table [4]? Please respond separately on each of the three Appointment conditions (Q, G and I) discussed.

We agree in principle with each of the mechanistic changes proposed to Appointment conditions Q, G and I, together with those which make it clear which conditions apply to households, non-households or both.

We will review the proposed revised wording when this becomes available.

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 agree in principle with the proposed changes due to equivalence.

We look forward to reviewing the proposed revised wording when this is available. In particular, we are keen to ensure that the changes relating to arm's length trading do not impose requirements which are more onerous than those already required by CA98.

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?

See response to Q5 above.

We do not see any reason why the Condition should differ between the Appointment and the WSSL.

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?

Although we agree that the Appointee's wholesale and retail businesses should behave as if they were separate legal entities, we do not agree that they should carry out their activities as if they were *unrelated* legal entities. This means that the wholesale and retail businesses should be able to share common services (e.g. electricity supplies, building insurance, in house legal teams, corporate services, procurement portals, etc.), so long as arm's length costs are charged to the retail businesses. Such sharing is necessary to preserve the current economies of scale and scope that Ofwat has included in the PR14 wholesale and retail price controls and default tariffs.

Further, we do not believe that Schedule 8 is required and feel it should be removed from the MAC. The requirement to have written terms consistent with the Business Terms is already addressed by Section 1.8.2 of the proposed licence amendment and Schedule 8 only proposes minor drafting changes to reflect the different legal status of Undertakers.

If Ofwat believes a form of guidance is required for the nature of internal written arrangements between undertaker wholesale and retail functions, these should be included elsewhere, for example in Condition R Compliance Code guidance.

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?

It is not clear to us whether this objective was achieved. We feel that it would be helpful to be clear on the extent a new entrant should be able to:

- benefit from economies of scale and scope from being part of a larger group, able to share office space, IT systems and other common services;
- benefit from being part of a corporate group that has a good credit rating and can raise working capital efficiently;
- benefit from being part of a corporate group that can offer a low trading risk (to both suppliers and customers); and
- benefit from its customer data from sales of products and services in other markets (as pretty much all products and services in the economy are sold to customers who will also buy water and sewerage/Trade Effluent services).

In our view, it is important to encourage efficient entrants, and the benefits listed above are likely to be characteristics of such efficient entrants.

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

It will be important to cross-check the changes against the arrangements for retail exit once further detail emerges.

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

Not at this stage.

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

As Ofwat is aware, our Instrument of Appointment differs from those of other companies as a result of the inclusion of provisions relating to the TTT (such as the addition of the fifth price control) and the obligation on Thames Water to collect revenue on behalf of TTT IP. Whilst we have not identified any specific points with what has been proposed, it would be prudent to cross-check the final versions in case an inconsistency arises.

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, we agree that these are appropriate and important elements to be used in assessing future licence applications.

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, we agree that gaining a retail future WSSL licence should be conditional on successfully completing market accession testing. We agree with the principles that duplication should be avoided, although have no specific examples based on the level of detail that has been provided to date.

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, we agree this is a good approach.

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

This seems to be a sensible approach.

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

The role of the sponsor should be limited or removed. The cost involved for licensees is not proportionate and it does not provide a significant level of assurance.

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

It is important to include the customer facing systems in the managerial competency test.

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 find it hard to reach a definitive view on this in advance of further details of the proposed testing and the supplier of last resort and supplier of first resort provisions. In any event, however, we agree that the certificate of adequacy will need to deal with scale considerations, but it may also be prudent for them to be addressed in the licence application process.

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

We agree in principle with this, although to ensure that WSL licensees can continue to trade effectively, further clarity is required as to how and when transition will take place.

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

Yes, subject to the points made in this response.

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

Yes, we agree with this at a high level. Although the certificate of adequacy should still be required in order to assure the market, and wholesalers of the financial and managerial stability of the licensee. The licence fee should be as per other licences.

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

In our view, it is important that responsibility and control are aligned, and any such new condition will have to ensure that it relates to matters within management control.

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?

For any such proposed licence condition, there is a risk that companies could be required to comply with a range of steps for market opening that are not reasonably achievable in the

time available or are outside management control. Alternatively, there is a risk that companies are ready, but MOSL is unable to have central systems ready on time.

This risk would be exacerbated by a lack of formal company control over Open Water Programme transition plans and market opening/delivery dates resulting in a requirement to spend unreasonable amounts of customers' money to be ready.

To avoid this risk we believe that a general licence condition would be the right approach.

This general condition might include such wording as a requirement to take 'reasonable endeavours to be market ready', to ensure that the requirement related to actions that can reasonably be achieved by the companies, and avoid the risk of unnecessary expenditure which would inevitably increase customer bills under the totex price control arrangements.

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?

At this stage, we do not believe anything further needs to be included.

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?

Yes, this is an approach that has been seen to work in other markets and seems to be a practical approach that should provide a good level of protection to customers in the event of the failure of a retailer. The detail as to how this is implemented will be important.

Q33. Do you have any suggestions about the best approach to ensuring that the new market arrangements are proportionate for:

a) smaller wholesale companies

The arrangements need to be able to demonstrate that there is no undue discrimination between wholesalers and between retailers, as well as wholesale to retailer. In our view the whole arrangement needs to be proportionate, setting rules that provide the appropriate services and payments without any market participant placing a greater or lesser risk on another or gaining a greater or lesser advantage.

b) small retailers

Small retailers still need to comply with all the relevant licence and market requirements to ensure that customers are adequately protected, and all customers have the same ability to exercise choice of supplier.

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

Companies that are wholly or mainly in Wales should still be required to comply with all the relevant licence and market requirements to ensure that customers that are able to switch under the relevant legislation, and are able to exercise their choice of supplier.

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?

The Supplier of First Resort arrangements need to ensure that there will always be at least one Supplier of First Resort identified for each customer type in each geographical area. This would best be achieved by ensuring that it was more profitable to be a Supplier of First Resort than not, for example, by offering reduced licence fees to those suppliers. We support the concept that any retailer should be able to opt out, particularly those who self-supply, but the ability for a supplier to opt out needs to be balanced with the ability to ensure that all customers are served by a retailer.

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

We believe that the arrangements for the developer services market proposed by MAP3 add unnecessary complexity and cost to the provision of water and wastewater connection services. One key change to the current scope of retail market rules that would address this issue is noted below.

It is our view that the commercial arrangements for the provision of connection infrastructure should be distinguished from commercial arrangements for the provision of the commodity.

The proposed approach in MAP3 (which requires all connection infrastructure provided by wholesale connections businesses to be paid for by retailers[2]) constrains and fragments Developers' current choice of commercial counter parties for their purchase of connection infrastructure.

Developers should remain free to choose who bills them for their connection infrastructure. Today a retailer is free to commercially interact with the connections business directly or to manage their engagement with the connections business via a 3rd party for example an engineering consultancy or a WSL licence holder. This flexibility has been removed, and needs to be reinstated.

In a change to existing proposals in MAP3, greater flexibility should be introduced to the market rules to allow connection charges to be charged by connections businesses directly to developers rather than the current requirement for all connection charges to be charged via retailers.

This proposed change would not impact any retailer's ownership of the commercial relationship with end customers for commodity services and, should developers choose, would retain Developers direct links with connections businesses. For large developers who

[2] Operational Terms Section A: New Connections.

have a wide range of commercial arrangement with connections businesses in relation to the provision of on and off-site infrastructure direct commercial relationships may be preferable. For NHH customers wanting their retailer to interface on their behalf we assume that connections businesses would be required to bill a retailer on request. This would not be prevented by any decision to distinguish the treatment of commodity and infrastructure services.

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

Ofwat's use of the term "incumbent customer facing developer services" needs to be defined in order to establish clear operational duties and obligations of retail and wholesale trading parties and clear retail market rules, including in particular what happens after retail exit.

There is an apparent inconsistency between defining some of the developer services activity as retail (e.g. as was the case in the PR14 price controls), when the obligations to connect continue to reside with the incumbent undertakers after retail exit. It will be important that this point is addressed to facilitate the retail exit proposals.

This need for greater clarity, in part explains trading parties' issues with the treatment of connection services in MAP3.

Customer facing developer services activities comprise:

- developer services comprises a wide range of differing services – not all of which are traded in the retail market;
- customer facing activity is required by both wholesale and retail parties; and
- commercial and non-commercial interfaces which are not sufficiently distinguished.

Thames Water does not see the provision of a commodity service as a developer services activity, but rather a commodity service traded in the retail market.

Thames Water does however see the provision of connection infrastructure as a developer services activity - but not a service that is required to be traded in the retail market.

We believe the commercial and market arrangements for the provision of network infrastructure should be treated separately and distinctly from the commercial arrangements for commodity.

We believe the customer facing activities of a connections business to be an activity that wholesale businesses are mandated to provide.[3] On this basis wholesale functions need to establish a wholesale connections business that is able to deal directly with a wide range of customers for connections services, including developers, end customers, retailers and self-lay organisations.

Retailers, including Thames Water's own retailers may choose to provide these services to end customers but are under no obligation to do so. If they wish to provide customer facing

[3] Process A1 of the MAP3 Operational Terms clarifies a market requirement for wholesale to provide a connection enquiry service and para 2.6 of Defra's December 2014 Retail Exits Consultation clarifies that wholesalers will remain legally responsible for providing connection services.

activities they will need to justify the value and margin they add to end customer's bills for any services provided. Thus incumbent customer facing developer services are an optional activity.

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?

We agree in principle that the retail element of special agreements should be contestable, and that, as a consequence, the wholesale charge needs to be disaggregated.

We note that the document proposes that "in the case of an undertaker who has not exited from the retail market, the obligation to publish Special Agreements is best placed with the undertaker to publish the same information as can be found on Ofwat's SAR". We agree that it is reasonable to publish the extent to which different wholesale prices have been made available, to ensure that all retailers are equally knowledgeable. This publication should include the level of those prices and the relevant applicability criteria for them, but we do not believe that details of customers that have taken them up should be published. The SAR should, therefore, be a publication of non-standard wholesale charges, rather than an obligation on retail businesses.

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 believe that the OBR data for forecast of RPI should use quarter 4 as it refers to the calendar year (i.e. average of Oct/Nov/Dec) and not quarter 3. This would use the following table: "Economic and fiscal outlook supplementary economy tables - March 2015"[4] - (tab 1.7 column K).

We are concerned that the consultation document seems to suggest that the only difference between indicative charges in July and final tariffs in December would be as a result of updated RPI figures. Variations between indicative wholesale prices set as early as July and final prices set in early January of the following year may vary as a result of:

- The difference between the QBR forecast and actual RPI.
- Updates in the charge multiplier forecasts used in calculating the wholesale tariffs taking account of more up to date information. This is particularly relevant where the charge multipliers are subject to significant change e.g. where a company has a significant metering programme moving customers from a rateable value to a metered or, where metering is not practicable, to an assessed basis of charge.
- The updated information in the amount that the Thames Tideway Tunnel Infrastructure Provider ("TTT IP") asks Thames Water to collect. (It is currently envisaged that the arrangements to collect the TTT IP revenue provide for the TTT IP to provide an estimate of the IP revenue requirement at various stages between

[4] Source: http://budgetresponsibility.org.uk/category/topics/economic-forecasts/

August and December, so indicative prices produced in July would be unable to take this into account.)

Whilst we understand the need to provide indicative tariffs to retailers, it should be appreciated that the earlier the date that companies are required to publish their indicative wholesale tariffs, the increased likelihood of more significant variations when compared against the final published tariffs.

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.

For services that require a wholesaler to hold an Instrument of Appointment, we agree that wholesalers should only levy charges, for any product sold in the market, that are included in their published wholesale charges schemes (or associated wholesale charging schedules which are taken to form part of the wholesale charges schemes) or published as special agreements. Wholesalers should free to negotiate prices for unregulated services.

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

We welcome Ofwat's proposal to seek to agree the changes through a consensual route, before considering the use of Section 55 powers enabled under Water Act 2014. Continued early engagement on key issues will be central to the success of this approach.

Additional points

In addition to our responses to the specific questions, we had some further observations relating to *Section 9.5 Practical wholesale charging matters* (backdating changes to charges).

Section 9.5 Practical wholesale charging matters (backdating changes to charges)

One of the advantages of competition is that retailers are incentivised to uncover circumstances where their customers have been charged incorrectly in the past. It will be important that the customers are able to be compensated appropriately for any errors. At the moment, we are concerned that the processes set out in MAP4 (as in MAP3) relating to backdating changes to charges may work to prevent this. We welcome, therefore, Ofwat's proposal in Section 9.5 to provide policy input to assist the Interim Code Panel in this area.

It will be important that the policy adopted ensures that, to the extent that any such compensation payments are made by retailers, those retailers are able to claim equivalent compensation from wholesalers, expeditiously and efficiently. The current draft of MAP4 (as with MAP3) imposes a materiality constraint that will delay and potentially prevent compensation being paid to both customers and retailers. We hope the Ofwat policy will address this point specifically.

Without suitable amendments to MAP4, customers who change suppliers could be at a disadvantage relative to customers who do not switch.