

# Briefing on Bristol Water Competition Act 1998 case

## Notice of intention to accept binding commitments from Bristol Water

[www.ofwat.gov.uk](http://www.ofwat.gov.uk)

### Background

Providing new connections to water company infrastructure is currently one of very few areas of competition in the water and sewerage sector. In this market accredited self-lay organisations (SLOs) are able to compete with water companies to lay certain water infrastructure.

There are limits to what services SLOs can provide because of water companies' duties in relation to:

- public safety;
- the operation of the live network; and
- the legal requirement for a water company to adopt any water infrastructure provided by an SLO.

As a result, SLOs always need to commission some services that only the monopoly water company can provide (that is, that are non-contestable) such as works on the live network, in order for the SLO to provide its (contestable) services.

Most water companies provide both non-contestable services (for which they are the monopoly provider) and contestable services (in which they compete with new entrants). As a result, where a

developer customer asks a water company (rather than an SLO) to provide new water infrastructure, the water company effectively provides non-contestable services to itself to enable those services against which it competes with SLOs. In practice both the contestable and non-contestable services are often provided by the same part of the water company's organisation ('developer services').

### Promoting competition and protecting the interests of consumers

Effective competition can deliver a wide range of benefits for consumers in terms of both the quality and cost of the services they receive. Competition offers more choice to consumers and is a key driver for efficiency, innovation and more customer-focused service delivery. In the market for new connections infrastructure we expect greater competition to deliver these benefits for developer customers.

Given the role water infrastructure plays in supporting sustainable development, effective competition in this market will also contribute to wider economic growth by enabling developers to bring forward development schemes more effectively and efficiently.

In line with our statutory duties, we are alert to potential breaches of competition law and willing and able to pursue them should we consider it appropriate to do so to protect consumers.

### Competition Act 1998 investigation

In 2013, Ofwat received separate complaints from two SLOs that alleged that Bristol Water was abusing its dominant position as the area's monopoly water company. The complaints raised concerns that Bristol Water was discriminating in the price and non-price terms (for example, the information and process requirements) that it offered to provide non-contestable services to SLOs, when compared with providing the same services to its own developer services function. The complainants (Aquamain Ltd and Energetics Design and Build) felt that this meant that developer customers would always find Bristol Water's developer services' offer more attractive than that which SLOs were able to offer. As a result, they felt that SLOs were unable to compete effectively in Bristol Water's area.

[We launched an investigation in March 2013](#) as we considered there were reasonable grounds for suspecting an infringement of the

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Competition Act 1998 (CA98). Ofwat has joint powers with the Competition and Markets Authority to investigate such cases if they relate to the supply of water, securing a supply of water or securing of sewerage services.

The focus of our initial investigation was that Bristol Water might potentially be using its dominant position as a monopoly water company to harm competition in the competitive market for providing new connections infrastructure.

### Offer of commitments

Our initial investigation identified four specific competition concerns in relation to Bristol Water's activities, both in terms of the charges it raises from SLOs and in terms of its day-to-day interactions with SLOs. Bristol Water has offered commitments to address these concerns. Under the CA98 Ofwat may accept commitments it considers appropriate to address its competition concerns. Following further discussions with Bristol Water, we now provisionally consider that the commitments offered by Bristol Water fully address our concerns. We consider that their implementation would address the concerns in a timely and effective manner, bringing earlier benefits for consumers than might be achieved through continuing our investigation with a view to a potential infringement decision.

We are now [consulting on our intention to accept Bristol Water's commitments as binding](#). Interested parties can make representations to us during the eight-week consultation period. We will consider such representations in making our final decision on accepting the commitments. Formal acceptance of the commitments would result in us closing our investigation without proceeding to a decision on whether or not Bristol Water has infringed the CA98. The commitments would be binding and enforceable.

This is the second time we have considered commitments in a CA98 investigation. In 2012, we consulted on commitments offered by Severn Trent plc in relation to a complaint raised by ALControl. In that case we [formally accepted commitments](#) in January 2013.

### Level playing field issues

This CA98 case raises key issues for the sector as a whole, demonstrating some of the fundamental issues that water and sewerage companies (which largely provide both contestable and non-contestable services) need to consider to ensure compliance with competition law. These level playing field issues will grow in importance as competition in the industry increases in the coming years, particularly as a result of the new Water Act. We are currently working closely with the sector to encourage consideration of level playing field

issues as part of preparations for the expanded non-household retail market for water and sewerage services in England, due to open in 2017.

### Enquiries

If you have any questions about the case and/or our notice of our intention to accept commitments, please send them to: [BristolWaterCA98@ofwat.gsi.gov.uk](mailto:BristolWaterCA98@ofwat.gsi.gov.uk).

## More information

'IB 02/13: Ofwat accepts commitments from Severn Trent plc',  
January 2013

'IB 04/13: Ofwat launches investigation into water company's self-lay charges', March 2013

'Notice of intention to accept binding commitments from Bristol Water plc in relation to the market for services for new water connections',  
May 2014



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**Water today, water tomorrow**

