



Retail Market Opening Programme
Ofwat
21 Bloomsbury Street
London
WC1B 3HF

05 February 2016

Dear Sirs

Priority changes to Instruments of Appointment (IoA) and Water Supply Licences (WSL) for non-household retail market opening

Thank you for the opportunity to review and comment on your proposals to prioritise certain licence changes before April 2017 in order to create the market arrangements necessary for market opening.

Q1: Do you agree with the proposed drafting changes to the IoA and WSL in removing the in-area trading ban? If not please explain why not and your proposed alternatives.

We agree with the proposed drafting changes to the IoA to remove the in-area trading ban. In particular this will reduce transition costs as we prepare for retail non-household competition by reducing duplication.

Q2: Do you agree with the proposed new readiness condition to be added to the IoA and WSL? If not, please explain why not and include your proposed alternatives.

We do not believe that the proposed new readiness condition is required. We already face strong reputational incentives to prepare for retail non-household market opening as well as participation in an extensive and comprehensive assurance process around our preparation and readiness.

We also have Licence Condition F6A which requires companies to act in the manner best calculated to ensure the adequacy of their resources, management and systems of planning and control to enable their functions to be discharged. This already creates sufficient incentives for companies to be ready for market opening on 1 April 2017.

For these reasons, we consider the proposal to introduce a new readiness condition to be unnecessary and disproportionate. We further note that the proposed wording would require companies to provide an unlimited commitment to do things (within their power) and that this could include things which have yet to be sufficiently specified by Ofwat, MOSL and Defra. We do not consider this to be reasonable.

If, nevertheless, Ofwat decides to make a formal modification proposal to introduce a readiness condition, we consider the following changes to the text proposed in this consultation would be appropriate whilst ensuring that Ofwat's objective of creating additional incentives on companies and reducing programme risks is achieved:

CONDITION [Z]: RETAIL MARKET OPENING

1.2 General Obligations

The [Licensee][Appointee] shall take the following such steps ~~and do such things as are within its power and which are or may be necessary or expedient~~ to ensure that it is ready for the opening of the Competitive Market on and from the Go Live Date ~~including, without limitation:-~~

- (a) ~~developing~~ company specific market assurance and readiness plans;
- (b) ~~identifying and gathering~~ relevant data in relation to ~~all~~ Eligible Premises and supply points [to which it currently provides services][in its area], ensuring reasonable efforts have been made to ensure this data is accurate and ~~ensuring it is~~ in a form capable of being transferred to any central systems and/or any market operator established to operate the Competitive Market; and
- (c) ~~testing and trialling~~ any systems and processes to be put in place for the Competitive Market,

1.3 Expiry of this Condition

This condition shall cease to have effect on the Go Live Date or such earlier date as the Authority may specify in a direction for the purposes of this condition generally.

1.4 Interpretation

In this Condition:

“Competitive Market” means the provision of retail water and sewerage services to Eligible Premises

“Go Live date” means the date determined by the Secretary of State as the date when Competitive Market opens

Q3: Do you have any comments about the use of existing s13 and s17J Water Industry Act 1991 (WIA91) powers to introduce the new readiness condition?

We believe that the proposed modifications to Condition R and WSL Standard Condition 7 should be made using the existing powers in Section 13 and Section 17I of the Water Industry Act 1991 respectively. By using these powers to make modifications by agreement, water and sewerage undertakers and water supply licensees will be treated equally.

As stated above, we do not agree that a new readiness condition is appropriate. If, however, Ofwat decides to make a formal modification proposal, again we consider this should be made using the existing powers in Section 13 and Section 17I of the Water Industry Act 1991.

Please do not hesitate to contact me if you would like to discuss any area of our response in more detail.

Yours sincerely



Christopher Offer
Director of Regulation