Priority changes to Instruments of Appointment and Water Supply Licences for non-household retail market opening – consultation

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.

No, we do not agree with the removing of the in-area trading ban prior to market opening.

We continue to believe that the removal will give incumbents an unfair advantage. We do not believe that the existing license conditions listed by Ofwat adequately mitigate this risk, and we consider that the in-area trading ban should to remain in place until the commencement of the WSSL.

Several other retailers operating in the Scottish market have previously expressed concerns that the removal of the in area trading ban from the existing license will give incumbents an unfair advantage in relation to the current market, which in turn will give them a head start to retail market opening. Despite those concerns, Ofwat has decided that there is no merit in pursuing further regulatory requirements on integrated companies. We feel very strongly that the ban should not be lifted and upon true market opening the regulations should be strong enough to ensure that there is a level playing field, rather than relying on post market opening regulation.

The future prospect of an arm's length provision as currently drafted does not relieve all of our concerns regarding the potential for a lack of true vertical separation between the relevant undertakers and retailers. As currently drafted (and we would remind Ofwat that this condition is not final nor does it take effect until April 2017), the future condition 7 is not sufficiently prescriptive and too open to interpretation. Our strong view, based on our extensive experience in the opening of the Scottish market, is that, particularly in the early days of the new market, and the immediately preceding period, stronger regulation of the incumbent providers and their retail divisions/companies is essential, until competition is sufficiently well established to ensure the market functions effectively.

Lessons learned from the success of the Scottish market show that additional license conditions placed on the incumbent provider were deemed necessary, even though greater separation has been achieved from that proposed in England, and these have proven beneficial for the market. We would ask Ofwat to consider why England would choose to not follow a proven protocol. We note that some conditions are still to be removed in Scotland, even though the market is established and switching is now a common occurrence. The removal of the in area trading ban is to the contrary of additional regulatory constrictions enforcing fair play on incumbents, it effectively gives them an advantage in a market they already control.

The additional conditions we refer to above include publishing of Pricing and discount plans, and the requirement that a retail operation is demonstrably able to operate as a commercially separate and financially viable entity, not dependent upon cross subsidies from an incumbent undertaker which facilitates offering customer prices that are unsustainable for an independent retailer. This would

apply to retail-wholesale interactions in general, but is particularly relevant for the in-area trading ban.

If Ofwat continue with their current conclusions, we would propose that the published compliance codes are drafted using guidance issued by Ofwat. This updated guidance should be clear and comprehensive on all areas of competition. These compliance codes should be strong enough and sufficiently detailed to be meaningful, not merely a statement referring to license conditions or other regulations, and should explain in simple language how the company complies, to give confidence not only to other market participants, but also to customers and other stakeholders, in order to demonstrate the transparent nature of the new market.

We would also suggest that there is further work undertaken to ensure that the removal of the ban, if the decision is taken to go ahead with this option, is fair and ensures a level playing field; currently, as we have expressed, we do not have confidence that it is. These steps should include:

- Ensuring that any data provided to the retailer by the associated undertaker is also published for all other WSL license holders to access either on request, or on a portal such as MOSL or Ofwat where it can be regulated. For example if data relating to all customers with water usage in excess of 5ML in the area were provided to the associated retailer, all of this information should be made available to other participants, as this data would not have been provided previously and would constitute an unfair advantage to the related party retailer.
- All services provided to an associated retailer in general should be covered in the access request, including meter reading in particular, but also IT services, HR services relating to insurance or data protection for larger customers, and customer services within existing call centres.
- If a customer switches supplier before market opening, they will receive two bills for water from the new supplier, and waste water from the incumbent. It would be an unfair advantage that completely disregards level playing field policy if an associated retailer were able to offer a consolidated bill for water and waste water by continuing to use the incumbent's billing system. If this is to be an option facilitated by the removal of the ban, this route must be offered to all market participants. An associated retailer must not be able to act as a billing agent without switching and providing two separate, distinct bills (like an un-associated retailer would have to), delivered separately, otherwise the cost of dual billing and related costs are not being accurately captured, a possibility that could be assessed during the reallocation of retail margins and accurate calculation of retail cost to serve.

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.

Yes

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 feel this is appropriate and gives confidence in Ofwat's ability to regulate the market.