



Retail Market Opening Programme
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Dear Sir

PRT Response to Ofwat Consultation on “Priority changes to Instruments of Appointment and Water Supply Licences for non-household retail market opening”

Thank you for the opportunity to comment on your consultation, published on 8 January 2016, on the proposed priority changes to Instruments of Appointment in order to facilitate market opening for non-household retail customers (“market opening”).

Firstly the Board of Portsmouth Water support the requirement to make licence changes in order to facilitate retail competition.

In our response to the previous consultation on licensing, published in June 2015 we supported the priority changes required in order to facilitate market opening. Specifically the removal of the in-area trading ban and the requirement for market readiness conditions.

This response replies to the specific 3 questions raised in your 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.

Yes; we welcome this proposal.

It will ensure all retailers are “on a level playing field” going forwards.

It should mean that incumbents will not need to set up a different retail entities to compete within area and out of area. It will reduce the overall cost of establishing the market which is a desirable outcome.

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.

No. We indicated in our response to Ofwat's June 2015 consultation, "proposed licensing and policy issues in relation to the opening of the non-household retail market", that 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".

However, we feel that the current drafting contains a number of issues. Most importantly, in our view, it is too broad and therefore could expose companies to open ended liabilities, greatly increasing compliance risk.

1.2 General Obligations

The Appointee shall take 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, ensuring 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,*

In reviewing the proposed drafting our three primary areas for concern are as follows;

1. Key elements and requirements are not adequately defined or could be subject to change.

Where elements of the licence obligation are not clearly defined or where definitions and requirements could be subject to change, the Company's compliance may not be capable of being objectively determined. As such the Company will be exposed to additional compliance risk.

We have provided some specific examples;

- The term "relevant data" and "supply point", are not formally defined in the Market Code. There remains ongoing discussion and debate within the industry, particularly in respect of data requirements.
- The term "Eligible Premises", has not been legally defined and remains an area of ongoing clarification. This could be subject to change before market opening with a risk of failure to comply.
- There remains the capability of the Interim Code Panel to make further changes to the Code. A late change in the Code, for a critical definition, could result in a company not being in compliance with the obligation.
- The term "accurate" could be interpreted in a number of different ways and makes no consideration of concepts such as "materiality".
- General terms used such as "systems" are not sufficiently specific.

2. Certain requirements are left open ended.

The use of the terms "any central systems" "any market operator" could result in an open ended obligation for companies. For example, should MOSL systems not operate effectively and a decision be taken to use, say, the WICS systems. In this event companies would have

an obligation to be in compliance with systems or processes which may be significantly different from those which have currently been planned for.

3. Beyond the wording “within its control” there is no reference to the significant external dependencies.

There are clearly a number of significant dependencies from third parties in relation to preparation of market opening e.g. the provision of systems, the results of testing, the detail of market rules and the confirmation of the current market code.

There is little reference to these, except the use of the term “beyond its control” which could be widely interpreted.

Some of these points could be addressed by providing clearer definitions and removing the requirements for “any systems” and “any market operator”. However, the more challenging area is in connection with the ability to make future changes to the market Code. This could possibly be dealt with by referencing a “snapshot” of the Code at a particular date in order to avoid the risk to companies that the goalposts are moved after the licence obligation is established.

Finally there should be specific drafting which clearly covers the need for key external dependencies (from Ofwat, MOSL and DEFRA) to be delivered.

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?

Given the nature and intent of the proposed change, the proposal to use s13, modification by agreement, as the vehicle to introduce the new readiness condition is appropriate.

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

Kind regards,



Helen Orton
Finance and Regulation Director