

Retail Market Opening Programme  
Ofwat

By email

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**Priority changes to Instruments of Appointment and Water Supply licences for non-household retail market opening.**

This letter forms our response to the above consultation and is written from the perspective of Severn Trent Plc and the respective licensees within the group. We have responded to each of the questions raised in turn below.

**Q1: Do you agree with the proposed drafting changes to the IoA and WSL in removing the in area trading ban?**

We are supportive of the removal of the in-area trading ban in April 2016 and believe that it will help to deliver an active market that customers are engaged in.

**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 alternative suggestion.**

We are very supportive of market opening and are committed to delivering our responsibilities to time and scope. We also recognise the importance of all stakeholders in the market having confidence that each party crucial to delivery (including incumbents, MOSL, Ofwat and Defra) is playing their part and making the necessary preparations for market opening.

However, as set out in our response to Ofwat's June 2015 *Licensing and policy issues in relation to the opening of the non-household retail market* consultation, we question the necessity of introducing a readiness licence condition on incumbent undertakers and WSLs in order to achieve this. There are already very strong reputational incentives and sanctions within the existing statutory and licensing framework to ensure companies are ready for market opening. Furthermore the hierarchy of assurance letters is designed to give all stakeholders confidence that each is delivering their contribution.

As such, an additional readiness condition, targeted at incumbent Water Supply Licensees (WSLs) and holders of Instruments of Appointments (IoAs), appears to be an unnecessary duplication.

*General comments on the condition*

Should Ofwat proceed with the implementation of a condition, it is important that the following points are considered.

In order to fulfil their obligations in time for the Go Live Date, licensees are heavily reliant on the readiness of other market stakeholders (eg Defra, Ofwat and MOSL) and that they achieve their own deliverables within timescales that allow licensees reasonable time to respond and prepare.

In particular, it will be important that sufficient opportunity is given for incumbent licensees to pass market entry certification prior to shadow operation, and sufficient opportunity for remedial action and testing to take place during shadow operation (as a last resort). Otherwise, missing this window could effectively mean that a company risks being in breach of a licence condition some six months before the go live date.

Given the dependency on third parties which incumbent licensees have limited or no control over, the condition should take account of what actions might *reasonably* be expected in the circumstances. We would also anticipate that Ofwat would take a proportionate approach to the enforcement of the condition – consistent with its current enforcement policy - if delays by other market stakeholders were a material contributing factor to delays in the readiness of incumbent licensees.

And, in line with its approach elsewhere in developing the market framework, any proposed condition should be proportionate to the size of licensee. For smaller WSLs and IoAs (eg NAVs) the condition – as currently worded - could be unduly onerous.

*Specific comments on the wording of the condition*

In light of the above points, paragraph 1.2 should acknowledge that: ‘The appointee/licensee shall take such reasonable steps...’.

Paragraph 1.2 (b) refers to accurate data. We recognise the importance of data accuracy in order to ensure effective market operation but, including all eligible premises to 100% accuracy could in practice be exceptionally difficult for companies with a large number of customers. Furthermore, ‘accuracy’ is a subjective term – there are several parameters to accuracy that would be relevant in this instance. The most important outcome is that the data is sufficiently accurate to allow the market to operate effectively for customers. As such, we suggest that any reference to data should be aligned to the requirements of the statutory wholesale-retail code and that the wording of the condition be amended to materially accurate.

Paragraph 1.2 (b) makes reference to ‘in area’ in the case of IoAs. There would be merit clarifying that this would not include eligible premises that are supplied by one company’s

network but span into the area of another. This could be achieved by replacing 'in area' with 'Eligible Premises and supply points to which it currently provides retail services.'

'Eligible premises' could be defined with reference to Ofwat's statutory guidance in section 1.4 for completeness.

Paragraph 1.2 (c) refers to testing and trialling. As noted above, incumbent licensees are heavily dependent on companies dependent on being given sufficient opportunity for testing and in good time. This would need to be recognised in both the wording and application of the clause.

**Q3: Do you have any concerns about the use of existing s13 and s17j WIA91 powers to introduce the new readiness condition?**

We are supportive of the use of the above process – seeking to gain the consent of affected parties. Given the importance of the changes proposed and the complexities attached to 'readiness' it will be important that those affected are actively and formally consulted on changes.

We would be pleased to provide further information on any of the above points. Please contact Harriet Towler ([harriet.towler@severntrent.co.uk](mailto:harriet.towler@severntrent.co.uk)) in the first instance.

Yours sincerely



**Dr Tony Ballance**  
**Director, Strategy and Regulation**