

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

Direct line: 01392 443967  
Email: [ivosper@southwestwater.co.uk](mailto:ivosper@southwestwater.co.uk)  
Our ref: IV

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Dear Christian,

**PRIORITY CHANGES TO INSTRUMENTS OF APPOINTMENT AND WATER SUPPLY LICENCES FOR NON-HOUSEHOLD RETAILER MARKET OPENING – CONSULTATION**

This letter forms a joint response from South West Water and Bournemouth Water to Ofwat's consultation on priority changes to Instruments of Appointment and Water Supply Licences for non-household retailer market opening. Our responses to the specific questions are included in Appendix 1.

To summarise, we welcome the removal of the in-area trading ban and agree that it is in the best interest of customers to do so as soon as practicable.

While we support the principle of the readiness condition, in Appendix 1 we highlight our concerns regarding points of detail and suggest revisions to the text of sections 1.2 and 1.3.

We would be pleased to discuss any of the points raised in our response, and look forward to participating in the ongoing dialogue regarding the changes required to the licensing framework to facilitate market opening.

Yours sincerely,



**Iain Vosper**  
**Regulatory Director**

## APPENDIX 1: RESPONSE TO CONSULTATION ON PRIORITY CHANGES TO INSTRUMENTS OF APPOINTMENT AND WATER SUPPLY LICENCES FOR NON-HOUSEHOLD RETAILER MARKET OPENING

### Question 1:

**Do you agree with the proposed drafting changes to the loA 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.

### Question 2:

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

While we agree in principle with the addition of the new readiness condition, we are concerned that, as drafted, there is potential for differing interpretations of the intention behind it. We are also concerned at the potential implications of situations arising that are beyond a company's control.

#### *Expiry of the condition*

As drafted the condition will cease to exist on Go Live Date; however if a licensee or appointee is not itself ready to operate in the market for whatever reason, the onus to continue market readiness work will fall away from that organisation on the cessation of the condition.

We suggest that the wording is amended so that the end-date is conditional on a licensee or appointee also being accepted in to the market.

#### *Bounded/unbounded requirements*

The drafting of the condition makes good sense; however it assumes that the requirement is bounded, whereas in reality there remains a degree of uncertainty surrounding the detail of the activities companies will be required to conduct prior to April 2017, for example the testing that will be required to ensure that the market will function effectively.

There is also a degree of subjectivity surrounding what market 'ready' actually means, therefore we suggest that the outcome ie an operational market, is focussed upon as this leaves no room for misinterpretation. We suggest the following amendment to the text:

'...The [Licensee][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~~ **can operate** for the opening of the Competitive Market on and from the Go Live Date including, without limitation:-...'

#### *Impact of Third Parties*

The critical path of the project is dependent upon MOSL meeting its targets and deadlines for releasing information and systems vital to companies and licensees for their own preparatory work. As such we are concerned that, by accepting the readiness condition,

companies and licensees are also agreeing to meet conditions and timetables that may become infeasible due to issues outside their control should for example, MOSL fail on a key deliverable.

It may be that the definition of 'Go Live Date' would flex in such a situation, and so reset the obligations associated with the condition. The definition as it stands in the condition suggests this is possible therefore we raise the matter for consideration.

**Question 3:**

**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 consider that the use of existing s13 and s17J powers is appropriate in the situation. However we also agree that Ofwat should use the responses to this consultation to gauge whether it will be feasible to do so, as the challenging timetable would be exacerbated by a CMA referral.

We therefore would not be averse to Ofwat using its new powers under the s55 Water Act 2014 if the situation required.