

United Utilities response to the Ofwat consultation: Priority changes to Instruments of Appointment and Water Supply Licences for non-household retail market opening



Introduction

United Utilities Water welcomes the opportunity to comment on the Ofwat consultation: “Priority changes to Instruments of Appointment and Water Supply Licences for non-household retail market opening.” This consultation is an important step towards delivering a competitive non-household retail market. The proposed new licence condition and licence changes are for the most part appropriate, although we consider one element of the proposed readiness condition needs to be changed so as to reflect more reasonable requirements on companies.

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 support the lifting of the in-area trading ban, which if retained would be inconsistent with the aims of retail market opening. Lifting the ban now enables preparations for market opening to be undertaken in a more efficient manner. We agree that were the ban to continue, companies would need to undertake duplicative activity during preparation for market opening, driving unnecessary costs into the business for no discernible benefit.

We believe that sufficient controls will be in place to ensure a level playing field exists without the need for an in-area trading ban. The potential publication of additional level playing field guidance has previously been mooted and we would support this as a means of increasing awareness of the need to ensure an arm’s-length relationship between incumbent wholesaler and retailers, be they associated or part of the same incumbent.

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.

In response to the previous consultation we questioned the need for a readiness condition. This reservation endures, although we accept that the condition could play a useful role in giving confidence to customers and other market stakeholders. Given this aim we welcome the simplicity of the proposed condition and agree that it should be time limited.

We recognise the importance of good quality data to a successfully functioning market. However we believe in its current form the proposed wording of the readiness licence condition in 1.2 (b) is not appropriate since, as an absolute statement, it is not capable of being complied with.

The stated intention of the consultation is to ensure companies prepare their data sufficiently for market opening. We have no objection to the inclusion of an element of the licence condition focussing on a requirement for companies to provide data to the market operator in an appropriate form. However one interpretation of the proposed condition could be that companies would have to take all steps within their power to identify all eligible premises or ensure that every entry in every data field for every customer is absolutely correct.

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Any attempt to meet such a standard would be both burdensome and ultimately futile; data points change constantly, meaning that any database will operate with a lag to reality, and every database will contain some inaccuracies. Furthermore, whilst companies should take reasonable steps to ensure that data is as reliable, accurate and complete as possible, given the number of datapoints it seems almost inevitable that at market opening, some errors or omissions will remain. This reality should be recognised.

Gap sites will continue to be a reality within the market irrespective of the steps companies take. In addition, uncertainties relating to the definition of eligibility will mean that a number of eligible customers may not be uploaded to the market operator in the first instance.

It is important that licence conditions are capable of being complied with and, further, that the requirements on companies are proportionate. The current proposed wording goes beyond what is required for the market to operate well. The good operation of the market should be the primary focus of this condition. Therefore we propose that the following section could be changed from:

“1.2 General Obligations

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 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 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,”

to

“1.2 General Obligations

The Appointee shall take such reasonable steps and do such things as are reasonably 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], to the extent that it is reasonably practicable to do so, taking reasonable steps to ensure that this data is sufficiently accurate to enable the effective functioning of the market and that 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,....”

We have no concerns as to the requirements a and c of section 1.2 General Obligations, which are to develop assurance and readiness plans and then undertake testing and trailing of systems and processes for the competitive market. These elements of the proposed licence condition are in our opinion appropriate.

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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 hope that these licence condition changes can be made using the existing s13 and s17J powers. We do however see that, before this could happen, there is the need for minor changes to the proposed licence condition reflecting more reasonable requirements in relation to data accuracy and the gathering of data relating to all eligible premises.