

RMO Independent Review 2 Response

Retail Market Opening Programme – Review 2 Response from the Retail Market Opening Management Group

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Dear Adam, Jon and Bob

I would like to thank you for carrying out the second independent review of the Retail Market Opening programme arrangements to deliver a new market for eligible non-household customers in England to choose their water and wastewater retail service supplier (the ‘second review’).

You have carried out a very thoughtful and thorough review in a tight timeframe and we recognise the difficulties of making a point in time assessment during a live and fast moving programme. I would also like to record my thanks to the interviewees that you spoke with during the course of your review for making sufficient time available at short notice and for participating in an open and frank way.

I also appreciate the review team acknowledging the good progress that has been made against the Baseline Review including the improvements in the governance arrangements, budget controls and resourcing. I believe that, like the Baseline Review, this report provides programme partners with an independent view to

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consider areas where we can further improve programme delivery and risk management.

Although Ofwat is the recipient of the second review, the issues affect all of the programme delivery partners and it was decided that this response should be on behalf of Cathryn Ross -Ofwat, Ben Jeffs - Market Operator Services Limited (MOSL) and Sarah Hendry from the Department for Environment, Food and Rural Affairs (Defra) as part of the Retail Market Opening Management Group (RMOMG) in its consideration of the recommendations.

The response outlined below provides some narrative on our understanding of the main themes emerging from the second review, before turning to responses to the specific recommendations at Appendix 1.

Yours sincerely

Adam Cooper
SRO Retail Market Opening Programme

Conduct and outcome of the review

You carried out the review through a combination of document assessments and interviews with key participants in the programme. You concluded that the programme delivery confidence was **Amber/Red**. We take this to mean that in your view the successful delivery of the programme is in doubt with major risks or issues apparent in a number of key areas and that urgent action is needed to ensure these are addressed, and whether resolution is feasible.

I have characterised the recommendations into a number of themes for the purpose of providing responses. We have addressed the specific recommendations in Appendix 1. Overall, I consider that the programme is able to address the recommendations quickly and in a satisfactory way. Some elements of the recommendations have not had universal acceptance or agreement and where this is the case we have indicated this point.

I also consider it worth noting the point in time in which the review was conducted. MOSL had moved to a red status in terms of its delivery of the first drop of the central systems and had mobilised additional resources and management actions to address the issue.

At the time of the review MOSL had not moved back to an amber status but the subsequent actions and activities have resulted in MOSL making this call on 13 July. Ofwat and Defra accept that in many respects the tight timeframes that MOSL operates to will require it to escalate issues quickly and in some cases miss delivery deadlines and/or re-phase aspects of the programme. MOSL's risks are reflected in the central programme risk register and feed into the overall programme risk level – which is currently rated at Amber. The Open water programme status rating is reviewed monthly at the Retail Market Opening Management Group. It assesses overall progress towards market opening in April 2017 and reflects both the current levels of risk set out in the Open Water Risk Register; and progress to date against the milestones set out on the level 1 plan and critical path.

A key strength of the governance arrangements is the open discussion between programme partners which allows information to flow quickly allowing programme

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risk levels to be re-assessed as necessary. With the remedial plan and management actions put in place by MOSL the programme partners are confident that the overall risk rating did not need to change.

Main themes emerging:

1. **Governance:** The review spends significant time on governance despite recognising the improvements made since the Baseline Review.
 - This appears to reflect the need for the Retail Market Opening Management Group (RMOMG) (and Programme Management Group-PMG) to act quickly and decisively given that there is relatively little time left in the programme. The programme partners all recognise that we are moving into an implementation phase and that even small issues may be amplified by the time deficit. We consider that the existing governance arrangements remain fit for purpose. The challenge will be operate flexibly within those structures in order to respond in an agile manner to issues as they arise. An important feature here will be how the wider sector uses the regular Work Plan Review Group to raise issues of importance as early as possible.
 - The review also sought greater clarification on the role of the Assurance Group which has now been provided through a published programme note. The Assurance Group has published its Terms of Reference and produces a note of its meetings, providing good visibility.
 - An interesting area of focus was about the role of non-incumbents, where there still seem to be concerns that the market was being developed by incumbents for incumbents. This was surprising given the open access to industry meetings, the breadth of representation on the interim code panel and the level of consultation.
 - There was also comment on the programme success criteria, and more specifically how this could evolve into considering what a successful market would look like.

2. **Organisational capability/capacity and transition from Shadow to Open Market:** The review wishes the programme partners to deal with any remaining

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boundary issues in the governance framework; determine absolute data requirements; addressing enduring structures for market functioning; and ensure the Market Operator is in place for shadow operations.

- There are many issues and activities that require additional orchestration and clarity as we progress through to market opening and these are under constant discussion between programme partners.
- Participants attending the Work Plan Review group will have an important role in bringing out the relevant issues and we will continue to communicate through programme notes and other ways to improve clarity.
- The data requirements have been set out and communicated in the data catalogue and data upload process and Ofwat's market readiness licence condition was deliberately designed to avoid qualifying the efforts that companies needed to undertake to develop complete data sets.
- Both Ofwat and MOSL have significant work to do to put in place enduring structures for the market operation, regulation and monitoring and these issues are already being considered by both organisations.

3. Risk Management: There are a number of areas that the review believes that RMOMG should undertake related to risk management. These include reviewing market attractiveness; considering how to identify and evaluate contingency options; and developing consistent criteria for assurance assessment; and learning from Shadow Market activities. The current identified risks are assessed on a regular basis, and the review team acknowledge that it is difficult to undertake some contingency discussions without impacting on delivery momentum.

- In some of these areas, the programme partners are not in agreement with the sentiment expressed by some interviewees. We consider that contingency or 'de-risking' options raised last December were handled properly within the governance framework –which in itself ensures that issues were considered by a wide representation of the sector.
- Similarly on the Assurance Framework, the review notes that this is a good framework and concerns about consistency seem to be driven by some confusion about the RAG outcomes of a narrow set of questions compared with the overall programme, and indeed MOSL's specific ratings.

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4. **Communications and Engagement:** The review took place during the implementation of the communications strategy that is, by design, only now becoming more externally focused.
 - The level of communications and transparency from programme partners and RMOMG has moved on significantly since the first review. Reintroducing the fortnightly calls in a more open format has allowed the programme to reach a far wider audience and the regular newsletter provides a further aide memoire for the wider sector on what is coming, and what has been delivered.
 - Ofwat retains leadership of the programme communications and has a dedicated resource in place until market opening which is important with the time now right to focus on customer awareness.

5. **Readiness for next phase:** The move to shadow market is a significant part of the critical path. The shadow phase will be an important test of both systems and participant readiness:
 - The overall market architecture and legislative implementation issues are reducing and MOSL has recently reached the point at which it believes that there is no ‘technical impediment’ to the market opening from a central systems perspective.
 - MOSL and companies’ readiness remain critical elements that could impact on shadow market operation, however there are a number of areas of assurance and evidence that will emerge on company readiness through the programme Assurance Framework, the Ofwat targeted review and MOSL’s market entry processes that will inform this risk.
 - MOSL has defined shadow market through a number of communications and held a workshop on 21 June to further clarify and replay to requirements. A shadow market paper was published with the actions followed up.

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There are a number of areas of work that were either underway or have commenced following the review, and where appropriate we have identified these in the responses to the recommendations.

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Appendix 1

Report Ref:		Urgency rating ¹	Response
1	RMOMG should consider how to identify and evaluate contingency options.	Critical	<p>Agreed: RMOMG will place some additional emphasis on managing risks through to shadow market operation, as this major milestone – linked with the second assurance letters – means that any contingency options should be considered over the summer.</p> <p>Action taken: The programme partners have held discussions to consider scenarios that could impact on programme delivery. The scenarios are being developed internally and will help inform the programme risk register.</p> <p>We would note that the December 2015 ‘de-risking’ workshop outputs have already been considered by the programme with a published decision from the Programme Management Group, leading to one code modification on Developer Services connections.</p> <p>The programme expects further ideas to emerge on managing programme risk and have sought to improve the operation of the Work plan Review Group (WRG) to ensure that issues are brought to light early and considered within the existing programme governance. Similarly, following requests from a number of participants, MOSL is</p>

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			<p>facilitating a working group to help determine a consistent industry standard for bi-lateral communications (i.e. between wholesalers and retailers).</p> <p>Results and evidence: The results of the work will go into the programme risk register. Clear protocols for identifying risks likely to affect programme delivery and escalating these to the RMOMG have been developed. The WRG is actively encouraged to raise key issues and propose solutions. Ensuring the companies recognise these regular meetings as part of the wider governance is important as it allows programme partners to maintain a wider view of implementation challenges.</p>
2	RMOMG should review the risk areas which concern the attractiveness of the market and the readiness of participants and confirm that all possible mitigating actions have been identified and are	Critical	<p>Agreed in part: New entrant concerns have been a longstanding part of the programme risk register given the market entry is a key element of market success through greater rivalry. More importantly, the readiness of market participants is a critical element of success.</p> <p>Action taken: New entrant issues are under constant review and the existing risk register notes actions on retail margins (that sit outside of the OW programme but are an Ofwat responsibility); In terms of market participant readiness, the programme considers that there are now a good suite of assurance approaches in place – with the overall programme Assurance Framework where companies will have to report against identified milestones, MOSL's market entry requirements, and Ofwat's targeted review that was issued on 13 June.</p>

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	being taken forward.		<p>Results and evidence: The non-household price control PR16 is still under consideration with specific questions on the appropriate cost base and margins for retail activities. The outcomes of any changes will not take effect until after market opening, but the programme does not consider that the existing margins are detrimental to market success. In terms of readiness, as noted above the different elements of assurance are all in play and as the programme is now in an implementation phase the position of different market participants will become clearer.</p>
3	For the next stage of the assurance process, RMOMG should consider the use of a consistent set of criteria which will provide a clear basis of assessment for stakeholders.	Essential	<p>Agreed: There are a number of learning points from the first letters coming out of the Assurance Framework.</p> <p>Action taken: Programme partners have met to consider the approach to the second assurance letters. While there will be no change to the Assurance Framework, the will: clarify the expectations of companies and the way that the evidence provided will be assessed by the programme. The programme partners have discussed the learning from the first letters of assurance with the Work Plan Review Group. It is recognised that the second letters of assurance will provide greater visibility of risks and approaches to management across the market participants.</p> <p>Results and evidence: A programme note updating the advice provided to participants prior to the first phase of assurance will be published in July.</p>

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4	OFWAT should ensure clear guidance to support the promulgation of the market readiness condition.	Critical	<p>Agreed: The market readiness condition is an integral part of Ofwat's regulatory activities for opening up of retail markets and will support a targeted review of company readiness through Ofwat's Finance and Governance function.</p> <p>Action taken: The market readiness licence condition was developed through a number of consultations and bi-lateral discussions with both WSL holders and Appointees, including dealing with concerns around how Ofwat will intend to regulate against the condition. This was also discussed at the February 2016 CEO meeting to provide additional clarity on the rationale behind the Condition.</p> <p>Results and evidence: The targeted review was sent out on 13 June on the back of the market readiness condition with the aim of obtaining more evidence of company readiness ahead of the Shadow Market.</p>
5	All programme partners and market participants should consider the practical implications of having to undertake the assurance process	Essential	<p>Agreed in part: The objective of the assurance process is to ensure that participants' boards have sufficient visibility of and confidence in the progress of their organisation against their published plans to provide formal assurance to the programme and, ultimately, to the Secretary of State. It is not an audit. The shadow market is a phase of 'as live' running to allow systems, processes and data to 'bed in' ahead of the market opening. As such, it provides an opportunity for any issues to be resolved and lessons to be learned in a safe environment. It also allows Market Participants and MOSL to assess</p>

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	during the shadow market period.		<p>their own readiness and address any gaps as necessary. The timing of the assurance letters has no impact on either the duration or the effectiveness of this period.</p> <p>Action taken: As noted above the programme partners have been working with the Work Plan Review Group to clarify expectations ahead of the second assurance letter.</p> <p>Results and evidence: A programme note updating the advice provided to participants prior to the first phase of assurance will be published in July.</p>
6	RMOMG should coordinate the consideration of success factors to ensure the development of a single set of criteria that provide an ambitious template for the continuing	Essential	<p>Agreed in Part: Success criteria already exist for the programme and have been published. The recommendation appears to be asking for further work around post market opening development.</p> <p>Action taken: The programme has begun to engage with senior leaders during the May 2016 event with a wider discussion on what a successful market looks like. The programme has already published refreshed success criteria and continue to work toward those. The further work on what a successful market looks like is part of a wider discussion for the sector to help to develop ideas that allow better measurement and monitoring of a dynamic market. Any such arrangements will have to remain suitably flexible to allow for further regulatory and market developments.</p> <p>Results and evidence: Work in progress – the results of the additional discussions across the sector will not alter the existing success criteria.</p>

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	development of the market.		
7	RMOMG should continue to develop its strategic leadership role. Fundamental to the success of that role will be clarity of and timeliness of decision taking and communication.	Critical	<p>Agreed in part: Since the Baseline Review and the refreshed governance arrangements the RMOMG has sought to provide greater transparency and clarity around its leadership role. It remains conscious of the different phases of the open water programme and how the focus on implementation may require greater emphasis on communications and the speed of decision making through all parts of the programme.</p> <p>Action taken: RMOMG has always published a summary of its discussions and decisions, and has for some time published its risk register and dashboard. Along with that it has re-constituted the CEO meetings which have been planned through to early 2017. The various recommendations in this report have been discussed by RMOMG with follow up actions delegated to the PMG. It should be noted that day to day decision making on programme issues is delegated to PMG. PMG is tasked with keeping RMOMG informed of key risks and issues and seeking strategic views where necessary. The programme partners recognise that clear and expedient decisions are necessary in a programme with tight time scales but RMOMG has always remained clear in its leadership role and does not consider that there is any need to alter the existing programme governance.</p>

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			Results and evidence: The evidence will emerge from the way in which RMOMG undertakes its activities providing strategic direction to the Programme Management Group and representing programme partners externally.
8	The status of non-incumbents within the governance structure should be kept under continuing review by all parties.	Essential	<p>Agreed in part: The concerns of non-incumbents are well recognised by the programme. However we consider that the existing governance arrangements and open access to meetings and programme partners acts to reduce much of the implied risk.</p> <p>Action taken: Much of the market architecture during the early development of the programme was focussed on wholesaler related activities but even during the development of the MAP the process remained open to new entrants, many of whom took the opportunity to engage in the development of the codes. The current governance framework remains open to interested parties, in particular the WRG is the formal avenue for all companies (both incumbents and new entrants) to feed issues into the governance framework. Programme partners have also remained open and responsive to direct representation. For the most part the programme partners would prefer issues to be raised within the existing governance processes so that they can be considered and tested with a wider audience. We are unaware of any significant issues where non-incumbents have not had the opportunity to help formulate solutions or had the ability to feed in comments and participate in discussions.</p>
9	RMOMG should clarify the role and	Critical	Agreed: The Assurance Group is an important source of information for Defra when framing its advice on market opening to the Secretary of State.

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	purpose of the Assurance Group.		<p>Action taken: The RMOMG has discussed the role and purpose of the Assurance Group.</p> <p>Results and evidence: As noted above the Assurance Group has published its terms of reference and a note of each of its meetings. The group has met 3 times and plans to meet as often as its members consider necessary through until April 2017.</p>
10	RMOMG should consider and clarify accountabilities for testing activities outside the central systems and processes and should propose how adequate assurance be given in these areas.	Critical	<p>Agreed in part: The review notes processes related to bilateral activities including those between wholesalers and retailers.</p> <p>Action taken: Much of these processes are the responsibility of the companies in meeting the obligations in the codes and/or licences. MOSL has agreed to facilitate a bilaterals group to deal with a range of issues. The targeted review asks some questions related to preparations in these areas, particularly around the work required by wholesalers to deal with retailers.</p> <p>Results and evidence: The additional step of the targeted review provides the opportunity for Ofwat to seek assurances and evidence on processes outside of the central systems, including those between wholesalers and retailers and also activities related to areas including preparations for customer activities.</p>
11	RMOMG needs to clarify how it will approach	Essential	<p>Agreed: We expect the new market to open in April 2017. The programme is on track and, as has been noted, the programme partners have robust governance, intelligence-sharing and programme management processes in place to ensure that this remains the</p>

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	decisions on market opening and communicating the conclusion.	<p>case. All market participants are accountable for their own readiness and it will be a condition of the instrument of appointment that companies are taking the steps necessary to participate in the new market arrangements and comply with the market codes.</p> <p>Action taken: The ultimate decision on when to open the market rests with the Secretary of State for Environment Food and Rural Affairs. The programme has put in place a formal process of assurance to provide the Secretary of State with visibility of progress at three defined points in the programme. February 2016, October 2016 and February 2017.</p> <p>Results and evidence: Programme note published on the 4th of March following phase one of the Assurance Process included the following statement:</p> <p><i>“There is just over one year to go until all businesses, charities and public sector bodies are able to choose their supplier of water and sewerage services, a choice we know they are keen to have. I am pleased to see that we are on track to open the new market in April 2017.</i></p> <p><i>I would like to take this opportunity to thank the water industry for all their work to support the implementation of this market and for their continued positive engagement with the Open Water programme.”</i></p>
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			Further programme notes will follow the second and third phases of the assurance process.
12	All Stakeholders need to address the requirements of enduring structures necessary for market functioning and greater clarity, particularly on the market operator, should be given prior to Shadow Market.	Essential	<p>Agreed: Being prepared for the enduring market is essential for its success and this recommendation is particularly relevant for MOSL as the likely Market Operator and for Ofwat who will be required to have in place resources and activities to support the market.</p> <p>Action taken: As part of the Retail Market Opening programme in Ofwat there is a need to provide handover of enduring operations to other parts of the organisation and to help inform on new areas of work. The main additional areas will relate to the Casework programme in terms of codes and licence work, and Finance and Governance Programme in terms of the Targeted Review on Readiness and market success informing the monitoring role. MOSL is also developing a ‘target operating model’ as part of its transformation toward becoming the enduring market operator, which will include the development of enduring market functions – some of which, for example, the enduring codes panel, will be coordinated with other programme partners.</p> <p>Results and evidence: The results will not yet be evident beyond the on-going internal work. There is some evidence within Ofwat in terms of the handover of the WSSL to the licensing team, and the work on the targeted review which will also help to inform some elements of the developing monitoring framework. Discussions are on-going within Ofwat on the handover of Retail Market Opening work during the course of this year and ahead of market opening. MOSL has identified and mapped all processes to deliver its</p>

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			<p>obligations under the codes in addition to its required business processes. MOSL will develop and roll out the required processes for shadow market operation and through to the go live date.</p>
13	The Communications Group and associated plan as envisaged in the revised governance framework should provide leadership, structure and momentum to the continuing communications activity.	Critical	<p>Agreed: The programme partners had envisaged a strengthening role for communications as the programme has switched phases. The communications group is empowered to deliver key programme messages with Ofwat assuming overall responsibility for raising awareness of the new market among non-household customers.</p> <p>Action taken: The communications group has developed a communications strategy and is putting this in place. This includes engagement with communications leads across the companies through regular events, and also seeking to refocus the Open Water website toward a more customer friendly portal. Further, the communications group is also leading on improving awareness through active media engagement, running briefings and holding events for key stakeholders.</p> <p>Results and evidence: The partners meet regularly to share plans and progress as well as coordinate activity, for example representation at industry events. Since January 2016 the programme has issued monthly updates to those registered on the Open Water website. The group also reintroduced the quarterly updates to water company Chief Executives, the second of which took place in May.</p>

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			A joint media briefing was organised in April 2016 to mark the 'year to go' milestone and in order to raise awareness of the significance of the new market with the wider national and consumer media.
14	RMOMG should ensure that the Shadow Market is clearly scoped and communicated to all market participants well in advance.	Essential	<p>Agreed: The 'shadow market' phase is due to begin in October 2016. Its purpose is to ensure that companies and MOSL have a period of time to operate to the market architecture plan. This includes being able to demonstrate the ability to comply with the business terms, the market terms and the operational terms as set out in the codes. Shadow market is therefore not an extended period of testing. It is a period of time to 'bed in' and prove all of the business and IT processes associated with operating in the live market. This will remove much of the volatility and improve confidence in market opening.</p> <p>Action taken: Working on behalf of the Open Water Programme, MOSL has engaged extensively with companies to clarify the nature and purpose of the shadow market phase as well as the requirements being placed on companies before it begins.</p> <p>Results and evidence: MOSL issued a shadow market operation paper in November 2015 ahead of a workshop in December. A further workshop was held in January and another on 21 June.</p>



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