



**Guidance on Ofwat's approach to
competition law in the water and wastewater sector
in England and Wales -
CCWater's response to Ofwat's consultation**

1. Introduction

- 1.1 The Consumer Council for Water (CCWater) is the statutory consumer organisation representing the interests of customers of regulated water and sewerage companies in England and Wales. CCWater has four regional committees in England and a committee for Wales.
- 1.2 Ofwat has invited comments on its draft guidance setting out its approach to competition law in the water and wastewater sector in England and Wales. We welcome the opportunity to respond.

2. CCWater's response

- 2.1 CCWater supports Ofwat's decision to update its guidance. It is right that it lays out its approach to ensuring water companies adhere to competition law, especially ahead of retail market opening for non-household customers in England.
- 2.2 We have specific comments relating to certain sections of Ofwat's guidance, as indicated below.

Section 1.3 Changing times

- 2.3 We agree that it is right that Ofwat updates its guidance now, ahead of retail market opening. Retail service providers, particularly new entrants, will benefit from an introduction to Ofwat's approach to competition law.

Section 3.5 Horizontal and vertical agreements

- 2.4 In its guidance, Ofwat cites vertical agreements as having an effect on competition. It may be useful for Ofwat to explain the type of vertical agreements which may, or may not, be in contravention of competition law. This is important as incumbent retailers have been required to adopt an arms-length separation from parent water companies rather than an outright legal separation in order to help establish a level playing field for the market.
- 2.5 See also 'Level Playing Field' below at paragraph 2.8.

Section 4.10 Voluntary redress

2.6 To avoid confusion arising due to the similar terminology, it would be useful for Ofwat to make a distinction between:

- The voluntary redress schemes it approves in relation to a Competition Act infringement (as referenced in this guidance), and
- The redress schemes that retailers are required to use as part of their complaints procedures (as required by Ofwat's Customer Protection Code of Practice).

Appendix 1 How to submit a complaint

2.7 Ofwat may wish to consider whether a separate reporting protocol is required in cases where CCWater or other stakeholders become aware second-hand of possible competition law infringement (e.g. from a whistleblower).

Other comments

Level playing field

2.8 On page 6 of its guidance, Ofwat cites its competition law powers which allow it to protect the 'level playing field'. It may be useful for retail market participants, particularly new entrants, for Ofwat to set out behaviours that might contravene a level playing field, and to supplement its guidance with any case studies that come to light.

Enforcement

2.9 Ofwat has cited its powers of enforcement in the guidance document. CCWater has comments on enforcement:

- It may be useful for some retailers, particularly those who are new entrants to the market, to understand the form and severity that enforcement action by Ofwat could take. Ofwat could outline its enforcement powers more clearly in its guidance document.

- CCWater supports the principle of penalising companies that behave inappropriately. However, where fines might be considered by the regulator, we would urge Ofwat to look first to restorative justice (where appropriate and allowable under competition law) to put money back into customer services. Otherwise, customers do not benefit from fines which are paid to the Treasury (see CCWater's responses to Ofwat's consultation on enforcement¹ and customer research, undertaken in 2009²).
- CCWater could have a role in triggering enforcement and should therefore be consulted about potential remedies.

3. Enquiries

3.1 If you have any questions about CCWater's response to this consultation, please contact:

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¹ <http://www.ccwater.org.uk/wp-content/uploads/2013/12/CCWaters-Response-to-Ofwats-Approach-to-Enforcement-June-2009.pdf> and

<http://www.ccwater.org.uk/wp-content/uploads/2013/12/CCWaters-response-to-the-statement-of-policy-with-respect-to-financial-penalties.pdf>

² <http://www.ccwater.org.uk/wp-content/uploads/2013/12/Customer-views-on-the-enforcement-system-used-in-the-water-industry-CCWater-July-2009.pdf>