

Competition law guidance consultation  
Competition Policy  
Ofwat  
21 Bloomsbury Street  
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BY EMAIL

20 January 2017

Dear Sirs

**Guidance on Ofwat's approach to competition law in the water and wastewater sector in England and Wales: a consultation ("Guidance")**

Thank you for the opportunity to respond to Ofwat's competition law guidance. As a new entrant we are pleased that Ofwat is highlighting the importance of ensuring a truly level playing field. We hope you find our feedback helpful in shaping your approach.

As you are aware, PR14 was carried out without the benefit of the working knowledge that is now emerging of the true costs of retail separation and of operating in the new competitive market. Our concern is that the PR14 allocated costs to serve not only do not include all costs, such as the substantial sum for the costs of the central market, MOSL, (we assume participants will not be permitted to account for this and other applicable costs as special one off costs) but that there may be, where current participants are exiting the retail market, a level of unidentified cross subsidisation between retail and wholesale operations resulting in an incorrect allocation of the cost to serve for retail operations.

Ofwat has repeatedly stated its intent to create a level playing field for all suppliers, new or current, and is keen to ensure increased competition for the ultimate benefit of consumers in the form of more competitive prices and improved service levels and offerings. We welcome this and are pleased to see Ofwat's statement in the Guidance that it expects to monitor closely whether any agreements or conduct may impede or interfere with the development of an effectively competitive market, for example by restricting the potential emergence of new competitors or forms of competition. Further, we are delighted that Cathryn Ross in her email inviting Chief Executives to the briefing on 24 January has said she is very conscious of the need for Ofwat to maintain a close watching brief on the development of the market and take "timely and effective action to ensure it gets off to the best possible start". It is clear from the examples provided by Cathryn Ross in her email that there is already cause for concern surrounding the current behaviour of some participants.

same  
water  
different  
price

We would urge Ofwat in advance of market opening to:

1. review the terms of all retail exit arrangements and transactions and verify that comprehensive arms' length commercial arrangements reflective of actual practices are in place between the wholesale and retail operations of current participants, covering all ongoing services to be provided to the retailer, particularly where such services are also provided to household customers of the wholesaler, or where resources and employee costs are shared; and
2. obtain written confirmation from all current participants that the same contractual terms as in 1. above are available to both new entrants and other current participants for all ongoing or ad-hoc services, including, for example, meter reading services, water audits, installation of AMRs, etc.

We would also urge Ofwat, commencing shortly after market opening and on an ongoing basis, to show transparency in its review of the financial performance of current participants against their business plans and PR14 submissions to create trust and reassurance to all stakeholders and market participants. We would welcome regular transparent reporting to verify the accuracy of the business plans including the allocation of costs between wholesale and retail and household and non-household, particularly the cost to serve figures previously provided, giving confidence that these remain valid targets in the new retail market, and are reflected in the arms' length contracts for ongoing services between wholesaler and retailer

It is in all parties' interests to ensure that there is a successful market opening and we look forward to working with Ofwat to ensure that this is the case.

If we can be of any assistance, please do not hesitate to contact us.

Yours sincerely



Gillian Hill  
Head of Legal