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**Sent by email only:** [casemanagementoffice@ofwat.gsi.gov.uk](mailto:casemanagementoffice@ofwat.gsi.gov.uk)

Dear Sirs

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

Thank you for inviting us to the launch event for this Consultation on 21 November. We were grateful for the insights provided by the Ofwat presenters and the other speakers. The Board of Glas Cymru takes compliance with competition law seriously and as well as receiving an annual Competition Compliance Report, has considered the competition law issues arising from the Market Opening processes and structures in detail. We are conscious that the cultural challenges mentioned by Cathryn Ross at the event on 21 November will need to remain an area of focus after market opening.

We recognise that the limited nature of the competitive retail business market in Wales can cause issues regarding both the proportionality and practicality of commercial solutions, and would welcome both recognition that the position in Wales creates particular complexities and any compliance guidance Ofwat can provide in this regard. By way of example, the references to the Water and Sewerage Undertakers (Exit from the Non Household Retail Market) Regulations 2016 on page 8 of the Consultation should acknowledge that section 4 of those Regulations limits the power to exit the Non Household Retail Market to companies whose supply area is wholly or mainly in England. We also think that the reference to the eligibility threshold for business customers served by companies based wholly or mainly in Wales on page 7 should be amended for clarity to make clear that the threshold is "50 million litres (M/l) at a single site per year" (as currently drafted it states that the threshold is: "50 million of water each year").

We note the statement on page 6 of the Consultation that Ofwat's focus is on realising the benefits of effective competition for water and sewerage customers, which aligns with the general aims of competition law. The Consultation is not entirely consistent on this point, since the discussion on margin squeeze on page 32, refers to enforcement in this area being "not to protect new entrants per se...". We would therefore welcome clarity in this respect.



We welcome correspondence  
in Welsh and English.

Rydym yn croesawu gohebiaeth yn  
y Gymraeg neu yn Saesneg.


On page 19 of the Consultation it states that Ofwat will define the relevant market for competition based cases on the facts of each individual case. It would be helpful if Ofwat could provide information on cases where it has already identified relevant markets for the purposes of competition law and the determining factors for defining such markets, since consideration of potential relevant markets (and the potential effects of a company's conduct on those markets) is essential to companies' consideration of any competition law issues which may arise. Cathryn Ross recognised this point at the event on 21 November when she emphasised that competition law is an effects based regime and that companies need to think about the processes they have adopted and also the implications of their behaviour in markets for the functioning of those markets (ie. so that processes and behaviour are considered within the context of the market in question). Any additional guidance from Ofwat in this area would be welcome.

In relation to the processes to be followed in a competition law investigation set out on page 38 of the Consultation onwards:

- it would be helpful if Ofwat could clarify which individual or team within Ofwat would fulfil the role of Senior Responsible Officer and how key decisions would be taken;
- similarly, page 42 of the Consultation states that Ofwat will follow CMA procedural rules but only that it will *"take into account"* CMA guidance. It would be helpful to have as much consistency as possible and any guidance that Ofwat could provide as to when they might differ from the CMA would be welcome;
- in addition, page 45 of the Consultation states that the Casework Committee is similar to the role of the Case Decision Group for the CMA, but does not indicate in what respects the role of the Committee differs. Page 47 also states *"We will generally follow the CMA's approach."* We are concerned that this will cause genuine administrative uncertainty.

Our suggestions above are aimed at achieving greater clarity and certainty for companies. We would welcome the potential for future guidance and ongoing dialogue with Ofwat on these issues.

Yours faithfully

  
PP. Nicola Williams

General Counsel and Company Secretary