Chartered Institute of Procurement & Supply

Response to OFWAT consultation: Monitoring the Business Retail Market from April 2017.

Q1. Are there any other objectives that market monitoring could or should fulfil in addition to those mentioned in section 2.3?

Given the scale of overcharging in this industry – often referred to in the hundreds of millions of pounds per year by reputable intermediaries who routinely investigate and challenge water company charges – and that around 10% of non-domestic premises are victims of overcharging, often for many years. How does OFWAT seek to improve this situation when the retail arm of one company has to deal with the wholesale of another and the customer has no direct relationship with the wholesaler? After all, the vast majority of incorrect charging issues are about the assumptions behind the bill (the wholesaler is responsible for these) and not with the retail element of the bill. Arithmetically, the bill is always perfect save for rounding policies, but investigations reveal that in 10% of sites there are incorrect assumptions about the actual services consumed by that customer which are provided by the water company.

There is a great deal of risk that legitimate claims for overcharging will go uninvestigated if the wholesaler adopts a position of stone-walling the retailer and their enquiries. An aggrieved customer may then decide to stop paying the retailer for the disputed charges yet the retailer will have to pay the wholesaler. How will this situation be monitored measured and resolved?

One of the Open Water (http://www.open-water.org.uk) success criteria is a “fair, transparent and efficient” market. Given that it has already cost the industry many millions of pounds to reach the stage of market opening and that the splitting of retail from their wholesale business incurs costs as does the marketing and advertising necessary to be an effective market participant, how do these additional costs reflect in the “efficient” criteria? They are a financial burden the consumer ultimately has to pay.

Q2. Do you agree with the issues we propose to monitor? What issues do you think should be monitored particularly closely?

In addition to the issues highlighted, particular attention to the source of the switch may provide useful intelligence (i.e. whether by direct approach from retailer or via 3rd party intermediary for example).

In relation to erroneous switches it is not only the number of them but the time it took to resolve the switch and the root cause of the erroneous switch must also be investigated.

Behaviour – this is already a subject which many intermediaries have grave concerns about without the added problems caused by the wholesaler/retailer split. To date, water companies have been able to hide incorrect charging due to the lack of effective consumer protection within the various Acts governing the water industry. It is the customer (or more usually their agent in the form of an intermediary) who has to prove the basis of overcharge and not the water company. It appears that water companies enjoy a level of protection no other industry enjoys and they are free to overcharge for years without any basis of truth in the charges. When they are ‘found out’ they often seek to limit the refund to the current year only - unless exceptional circumstances can be proven.

There could be monitoring of:

- Each participant's market share and change in market share by number of customers, by number of premises and the value of business switched and retained.

- Value of any cost savings achieved by customers is surely a key component of the reason for a competitive marketplace.

- Reason for switching supplier such as savings, consolidation, other bundled services etc.

It would also be very useful to review those retail companies who have been spun out of existing water and sewage organisations versus those who are genuine new entrants. We need to understand whether there are any 'back-door' mechanisms in place which therefore prevent a level playing field for all participants.

Q3. Do you agree with the type and format of the information we are planning to obtain from the market operator? We welcome views on:

- the choice of metrics, their usefulness for our assessment of the market and ways of ensuring they are as useful as possible; and
- the availability of that information, the opportunities and limitations of obtaining information from the market operator, including sources that could supplement it.

To gain a critical insight into the workings of the market, the behaviour of participants and the customer experience, engagement with the intermediary sector is vital. It is almost always intermediaries and not customers who are able to spot any problems and get to the heart of the matter. Yet, engagement will be difficult as commonly, the intermediary business model is one based on shared savings so any engagement which reduces or constrains the intermediary will be resisted.

Q4. What information will retailers hold that will help us achieve our monitoring objectives? We welcome views on:

- the choice of metrics, their usefulness for our assessment of the market and ways of ensuring they are as useful as possible;
- the availability of that information, including where else we could obtain the information that we would like retailers to provide;
- the best way for retailers to share that information with us (eg most appropriate format);
- whether retailers will be able to segment information in the way we require; and
- the best way to make sure the regulatory burden is proportionate, especially for smaller retailers.

The potential derogation for new and smaller participants is a necessary step but there must be a time and/or turnover threshold which moves the retailer towards full reporting in the way that incumbent retailers will be expected to do from market opening.

Q5. We would welcome views on our proposal for informal monitoring, any other tools we could use, and how we might make the best use of the information available.

Informal monitoring may provide useful information (though we question how much 'data' it can provide) but use of social media is likely to be highly weighted towards the tech-savvy or those with a particular issue to promote. For example; there have been a number of 'Twitter-spats' in the water industry in recent years and this does not reflect well on any aspect of the industry, but is a good source for data gathering and customer insight

Q6. We would welcome views on how best we could involve third party intermediaries in our monitoring framework, which information would be best to collect and how we could obtain it.

Intermediaries are a very important part of the water industry because most consumers have a very poor knowledge of the breadth and scale of the water industry and the interaction of the different elements. It is usually intermediaries who identify problems/opportunities or who are relied upon to deliver the solution to a problem a customer has identified.

It is worth noting that the intermediary's relationship is with their customer and not OFWAT. Any requirement to provide reporting in any detail will likely be met with resistance. There is the potential for a request for sensitive market data t to be rejected. More consultation with intermediaries is required to ascertain the degree of willingness to provide such data.

If the right incentives and mechanisms were to exist, intermediaries are much more likely to report problems, issues, concerns, bad practice, allege collusion or unwillingness to compete or provide quotations and, while these issues can often be quite emotive, they provide useful insight into areas which are perhaps not being monitored through other mechanisms.

Q7. We would welcome views on how best to collect useful information on market segments. In particular, we would welcome views on challenges to deriving the market segment information we envisage and ways of overcoming them.

Understanding engagement by segmentation is vital to give the wider perspective of the market however it is more about the conclusions which can (or can't) be drawn from the segmented data. Mature segments such as large multi-site enterprises will likely be over-represented in the data while small and micro businesses will probably be under-represented. Therefore it is important to weight the data according to segment size and the data set accrued from that segment.

Q8. How can we best make sure that relevant information is shared in a transparent and useful manner, whilst also being mindful of commercial and personal confidentiality and without prejudice to competition law?

Data will have to be anonymous of course and care needs to be taken to avoid revealing client identity due to small sample sizes. However, some clients may actively seek to promote their involvement or activity – for example the major food retailers or the automotive industry – and, while this exposure could be useful to other consumers, it also has the risk of appearing to be a form of advertising which may not always be welcome by all participants.

ENDS

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