

Monitoring the business retail market from April 2017: a consultation



About this document

This document invites views on our proposals on how we intend to monitor the outcomes and performance of the expanded competitive retail market in England and Wales, following the opening up to competition of the business, charity and public sector retail market in England. It builds on feedback from our stakeholder workshop held on 11 October and we will take account of views from respondents to this consultation in order to finalise our market monitoring policy and prepare the format of information requests that we will send to relevant parties.

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Responding to this consultation

We invite you to comment on our proposed approach to measuring business retail market outcomes and performance by **10 February 2017**. In particular, we would like your views on the following.

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

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

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.

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.

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.

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.

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.

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?

You can email your comments to MarketMonitoringConsultation@ofwat.gsi.gov.uk or post them to:

Ofwat
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We will publish responses to this document on our website at www.ofwat.gov.uk, unless you indicate that you would like your response to stay unpublished.

Information provided in response to this consultation, including personal information, may be published or disclosed under legislation on access to information – primarily the Freedom of Information Act 2000 (FOI), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you would like the information you provide to be treated as confidential, please be aware that, under the FOI, public authorities must keep to a statutory Code of Practice which deals, among other things, with obligations of confidence. Because of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we are asked to disclose the information we will take full account of your explanation, but we cannot guarantee confidentiality in all circumstances.

An automatic confidentiality disclaimer generated by your IT system is not binding by itself.

1. Background

1.1 Creating a successful retail market

From April 2017, more than 1.2 million businesses and other eligible non-household customers in England will be able to choose who supplies their water and wastewater retail services.

At the moment, business customers whose water company's area is wholly or mainly in Wales can choose their retailer, but only if they use more than 50 million litres of water each year. This threshold will stay the same but the market arrangements to support those customers will change, consistent with the market arrangements being put in place to support the enlarged market relevant to undertakers whose areas are wholly or mainly in England.

Introducing competition for businesses, charities and public sector organisations is the biggest change to the water sector since its privatisation more than 25 years ago. This change will create the biggest competitive water retail market in the world.

Competitive markets for water and wastewater should help drive down prices, improve water efficiency, encourage innovation and improve customer service. For instance, we understand that companies with multiple premises across the UK would often prefer to have just one water retailer and just one bill, instead of the dozens or even hundreds they may currently receive. Full non-household retail market opening should facilitate this.

“Most water companies still send paper bills for each customer site, meaning that, for example, one business customer with 1,400 sites received 4,000 paper bills a year.”

Water retail services competition in England and Wales, Policy Exchange

In deciding to open the market to increased competition, the UK Government expected it to contribute around **£200 million** to the UK economy and to bring significant environmental benefits.

However, these benefits will only be achieved if the market is truly competitive and efficient – and is seen to be so. We have developed new market arrangements to

support the enlarged market and make sure that the market works well upon its full opening in April 2017.

This consultation focuses on the monitoring framework that we plan to put in place following the market opening to make sure that we understand whether the market is working well and so that we can intervene in an appropriate way should that not be the case. We also discuss the form of intervention that we might take based on the outcome of the monitoring work.

1.2 A different regulatory approach

The expansion of the business retail market to further eligible non-household customers in England will start a new chapter in our approach to regulation. Until now and without prejudice to our enforcement powers and concurrent competition powers, which we use in appropriate cases and in accordance with our statutory duties, we have used primarily ex-ante regulatory tools designed to deal with problems of monopoly. This has involved us, for example, setting specific limits on prices and targets for service quality for retail services in advance of each five year control period, based on forecasts. In future, competition means we will use more framework-based regulatory tools. This will see us focusing more, for example, on establishing overarching rules to allow transactions between market participants to take place with as little friction as possible, and using ex-post intervention if we see evidence that market participants are not acting in line with those rules. The establishment of these overarching rules has been the focus of the [Open Water programme](#).

The Open Water programme was set up by the UK Government to deliver the competitive business retail market in water by April 2017. It consists principally of Ofwat, the Department for Environment, Food and Rural Affairs (DEFRA), and Market Operator Services Limited (MOSL), a company limited by guarantee set up by certain market participants to support the procurement of a central system to support the new market arrangements. The Open Water programme has created the underlying architecture and environment to allow the business retail market to flourish.

Once the market opens, we expect the need for further ex-ante regulation to be more limited. Where specific competition or regulatory concerns occur, we expect to rely primarily on ex-post regulation (ie regulation after the event, based on actual findings) and our concurrent competition law powers. A strong monitoring framework will play an important role in supporting this form of regulation. Such a monitoring framework is essential if we are to be able to intervene in a timely and effective way

to support the functioning of the market. Even if no interventions are needed, the ability to harness and evaluate such information and, where appropriate, its transparency, will support the maintenance of trust and confidence in the market.

As the market develops, our approach will evolve to reflect changes in the nature of the issues arising. We expect to monitor the market more closely around the time the market opens, and for some time afterwards, to help customers and other stakeholders gain confidence. Listening to customers and responding to challenging stakeholder expectations will be an even higher priority in a market environment, not least because of customers' experiences in other regulated markets.

1.3 Learning from other markets

Throughout this document we will talk about experiences in other regulated markets. We have learned from that experience, from the energy and financial services markets in particular, and applied this insight to our monitoring approach.

For example, experience in those two markets suggests that the behaviour and bargaining position of smaller businesses in a competitive retail market is more aligned with that of household customers. We have therefore introduced extra protections for small business customers in our initial regulatory framework and will be looking closely at their experience as part of our monitoring.

The Competition and Markets Authority (CMA) [investigation into the energy market](#) highlighted that different customer segments engage in the market in different ways, and that some customers do not appear to engage in the market at all. We will pay particular attention to customer segmentation and the impact of the retail market opening on different categories of customers.

The CMA's investigation also specifically called for a more evidence-based approach to developing provisions and/or interventions in the future. Our monitoring approach is designed to give us that evidence base, and indeed the need for a clear understanding of market activity is one of the key lessons from other markets.

We have considered the type of evidence that other regulators have used to understand how a market is functioning. We found some common themes that we have taken forward in our approach to monitoring. For instance, most regulators monitor the following metrics: market share, switching rates, customer satisfaction and customers' awareness of the options available. Regulators found that considering a basket of metrics rather than focusing on one metric in particular led to better monitoring.

Regulators also found it important to understand the impact of third party intermediaries and to monitor markets pro-actively. They have taken differing approaches to investigating these parties and how they share information about their findings with stakeholders. For example, Ofgem has a [data portal](#) whereas Ofcom issues an [annual report](#).

2. Ofwat's proposed approach

2.1 Our strategy

Ofwat is a statutory body responsible for regulating water and wastewater companies in England and Wales. We want companies to understand our expectations and how we will respond if they fail their customers.

We launched our strategy ('Trust in water') in January 2015. This set out our shared vision for the sector of trust and confidence in the vital public services the water and wastewater sector provides, and our expectation that companies in the sector would step up to deliver this. Our strategy makes clear that where companies do not step up, we will step in to make sure that customers are protected. It also set out our journey towards becoming a more proportionate and targeted regulator, willing and able to use all the tools in our tool kit as required. We intend to use our regulatory tools flexibly, to put the onus on water companies to own their relationships with customers and wider society.

In light of this, we will continue to focus on the issues that pose the greatest risk of harm or detriment to customers. Where appropriate, we will use our tools to resolve issues effectively and efficiently to benefit customers. This will build trust and confidence in the business retail market.

Our approach will continue to reflect the better regulation principles of:

- proportionality;
- accountability;
- consistency;
- targeting; and
- transparency.

2.2 Scope of monitoring

The expansion to the competitive business retail market that will take place in April 2017 is focused on extending competition to eligible non-household customers of incumbent companies whose areas are wholly or mainly in England. The market arrangements introduced in April 2017 will also apply where there is competition under devolved jurisdiction in Wales but without any change in the 50 million litre consumption threshold.

We intend to apply our market monitoring framework in a proportionate way across the competitive business market as a whole, taking account where necessary of the different conditions of competition that apply. This will provide us with information to understand how the two markets evolve.

2.3 Objectives of market monitoring

Effective competition

Our monitoring framework will allow us to understand whether competition is functioning properly in this market, and if not, the best way to act. In particular, we will need to:

- identify and assess barriers to effective competition;
- track the evolution and nature of competition in the market;
- assess the impact of existing regulation;
- consider regulatory interventions that could improve the effectiveness of competition; and
- intervene in an appropriate manner to protect customers' interests.

We cannot predict how this market will develop. It may develop in a number of different ways, depending on the preferences and behaviour of a wide range of market participants. That said, well-functioning markets have certain clear hallmarks, such as:

- customers are confident in their ability to engage with the market in their best interests;
- customers are treated fairly, they have accurate information about the offers available in the market and they are not subject, for example, to mis-selling or misleading marketing;
- customers overall benefit from some combination of lower prices, better service levels and more innovative products and services;
- the market is conducive to innovation that customers value;
- there are no undue barriers to entry, expansion and exit, ensuring that efficient providers can enter the market and can expand and inefficient providers can exit without detriment to their customers;
- the switching process, including switching between providers and between deals from the same provider, is simple and efficient, ensuring that customers find it easy to switch and make informed decisions when doing so; and
- the extent and impact of anti-competitive behaviour, such as margin squeeze or selective discounting by dominant providers, is limited.

Open Water success criteria

The Open Water programme has set a number of success criteria for retail market opening. These criteria capture a number of the hallmarks of well-functioning markets that we set out above.

Open Water programme success criteria
All eligible non-household customers have a choice and know how to exercise that choice. They are in a position to negotiate better targeted, more efficient and more cost-effective services.
Costs improve for the majority of customers.
The new competitive markets are fair, transparent and efficient.
Customers' experience of the market between England and Scotland is seamless.
The market incentivises both existing and new market participants to offer innovative services.
The market minimises barriers to entry, encouraging a variety of different participants to enter.

Some of these success criteria refer to the **market structure** – ensuring the right elements are in place to support a well-functioning market. The market will work well when firms are subject to competitive constraints from other firms in the market or those that could readily enter it. New entry can be a particularly effective form of competition. This is because new firms can disrupt weak competition between incumbent firms with potentially different business models, by bringing more efficient and more innovative goods and services to customers. Market share helps us understand the degree of competitive pressure that the different suppliers can exert on each other. Looked at over time, market shares can help to reveal the competitive dynamics between suppliers. This could be supplemented by an assessment of the type of competitors and patterns of entry and exit, and trends in suppliers' shares of different customer groups.

Whilst the market structure criteria provide a useful indication of whether the market is working well, we think that **customer experience and quality of service** received (or perceived to have been received) is just as important. The availability of a range of services to meet customer preferences, including a range in terms of quality, is also a prominent indicator of a market that works well. We expect competition between retailers to promote the development of improved services to meet customers' needs. An important aspect of the customer experience is the ability to switch suppliers smoothly and efficiently to make sure those needs are met. Third party intermediaries can play an important and positive role in this respect.

The way in which market participants behave – **their conduct** – both amongst themselves and with respect to customers is also something we will monitor. This

includes, for example, the effectiveness of retailer and wholesaler interactions, and absence of mis-selling or anti-competitive behaviour.

Opening of other water markets

Monitoring of the business retail market in water will also provide us with evidence that will enable us to consider the impact of opening other water and wastewater markets to competition. For instance, the monitoring work will give us further valuable insights into what customers expect from their water and wastewater services. We consider that there is likely to be a close read across to the design and operation of a competitive residential retail market for customers who are served by undertakers whose areas are wholly or mainly in England, should the UK Government decide to open this market. There may also be useful lessons for the water resources and bio-resources markets.

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

3. The process we will follow

In the previous chapter we discussed what a well-functioning market might look like and the key features we are going to be looking at. This chapter describes how we will learn about whether the market is functioning well and how we will assess this information. In Chapter 4 we will discuss how we will go about using this information to determine whether intervention is necessary.

3.1 What we intend to measure and why

By complementing our wider intelligence gathering through the monitoring of a number of key metrics, we will be able to track the development of the market over time, with trends and anomalies providing useful information about any issues arising. We will monitor a number of key metrics based on well-established best practice of regulators in other industries. How we may respond to the information gathered is discussed in Chapter 4. These metrics will tell us about:

Market structure

- the numbers of retailers and third party intermediaries present in the market (we may classify this by different types), their entry, exit, and evolution of their market share and the services they provide;

Market conduct

- behaviour of market participants. We will track any non-compliance and complaints of non-compliance with the Wholesale Retail Code and the Market Arrangements Code and any instances of non-compliance and complaints of non-compliance with competition law;
- treating customers fairly. We will look at customer complaints data, data on resolution of those complaints, and the functioning of redress mechanisms. We will track compliance with our Customer Protection Code of Practice and any instances of non-compliance (by type). We will also look at data on assistance for vulnerable or sensitive customers (recognising this is a less prevalent issue for business customers than residential customers);
- quality of the (inter-provider and intra-provider) switching process. This will include number of successful switches, length of time of switches, number of erroneous switches;

Market performance

- customer engagement with the market. This will include numbers of customers switching provider and switching tariff within provider. We would also like to have data on numbers of customers inquiring about alternative offers. And we would also like to have data showing how many switches (inter-provider and intra-provider) happen using different search and switching methods and on the drivers of switching; and
- customer outcomes. This will include data on tariff levels, consumption, and services offered. It will also include data on customer satisfaction and trust. We would like to have data on the number of customers on different types of service offer (eg multi-utility or water-only).

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

3.2 How we will learn about problems in the market

We need reliable, timely data and information to make evidence-based decisions about whether the market is working, what it is delivering and whether we need to intervene. There are a number of ways we might find out about possible market-wide issues or about specific market participants' failures to meet their obligations. These include:

- company self-reporting – we expect companies to tell us as soon as they find a possible contravention, fail to meet statutory standards or become aware of any other potential problem (and we will take this into account in how we respond);
- publicly available information, including the information retailers provide to their customers and to their investors (for example in their annual reports and annual results);
- information from the market operator;
- information from other stakeholders (including other regulators);
- information about the customer experience, including customer satisfaction data, trust indices, and net promoter scores but also qualitative information about different aspects of the customer experience;
- information from customer complaints and enquiries;
- complaints from market participants regarding the behaviour of other market participants;

- pro-active checks on a specific aspect of the market or an individual company's performance;
- market research; and
- media (including social media).

Some market intelligence will come to us informally as and when issues arise, such as through complaints from customers. We also see a need to collect some defined data and information on a regular basis. Pro-active monitoring will be essential to make sure that we are able to take prompt action to maintain customer trust, help the market develop effectively, and protect customers where necessary.

We are not setting targets for any of these metrics. Instead, they should be seen as evidence that will help us evaluate how the market is functioning and developing. The metrics should also not be seen in isolation. The success of competition in the market will depend on a range of factors, and we will consider market intelligence in the round.

Our assessment of these metrics will also be context-specific. This is because, as the market develops, low or high levels of certain metrics may take on different meanings. They will need to be interpreted carefully alongside a range of other information from a variety of sources. For instance, low levels of inter-provider switching immediately after market opening could be a sign of low levels of awareness that the market has opened, whereas in a few years' time it could be caused by high levels of contract renegotiation between customers and their existing suppliers.

Experience from other markets suggests this monitoring will be particularly important in the early development of the market, as the market is bedding down and evolves rapidly. We will look closely at developments in related markets, such as energy, telecoms and financial services, as this could provide valuable intelligence on possible developments in the water retail market. Our monitoring approach will need to evolve with the market.

Market operator

The business retail market in water will be assisted by a market operator. The market operator will be appointed by relevant market participants to fulfil certain roles and responsibilities under the market codes.

Companies that wish to enter the non-household water and wastewater market for retail services after opening in 2017 are required to become members of the market

operator. Membership is open to existing water-only companies, water and wastewater companies, and to all holders of water supply licences and wastewater licences, regardless of the authorisations held.

The market operator acts to make sure that transactions between retailers, and between retailers and the different wholesalers, are managed as effectively and efficiently as possible. In carrying out its role, the market operator should act independently of the interests of any market participant or group of market participants, and at all times act in the best interests of the market as a whole.

The market operator role is separated broadly into an information processing role (eg market settlement and registering who supplies which customer); and a market administration role (ie administering the market and changes to market rules). This includes delivering and operating the core IT systems that will enable registration, customer switching and financial settlement between wholesalers and retailers.

The market operator operates the Central Market Operator System (CMOS), which enables customers to register and switch supplier. CMOS will also undertake the settlement calculations between wholesalers and retailers. Whilst there are limitations to the data CMOS can provide, it does provide some crucial information, such as information about retailer switching and similar items, which can indicate how customers are engaging with suppliers and their representatives in the market.

Deriving inter-provider switching metrics from CMOS

Inter-provider switching is only one way in which customers engage with the market, but it is a useful indicator of the functioning of the market. It is therefore one of the metrics we want to monitor. However, in CMOS a 'switch' in itself is not a single item. The process of inter-provider switching involves several operations which impact on a number of variables in the market operator's system.

For example, when a customer switches provider: their retailer ID will change; there is the potential for blocking the transfer and reporting why such action has taken place (which can be for valid reasons); there may be personal information that is updated; meter readings and usage information will change; and then there is also the timing of these changes (the most useful being the time it takes for a customer to switch from one retailer to another). Or the switch may have been erroneous. All of this information will help us build up a picture of switching behaviour.

As such, it is not one variable that requires consideration but a range of variables. We have therefore included in our list of market operator data various items that feed into our monitoring.

The market operator could facilitate our monitoring processes and, as the market operator is a company appointed by market participants and a signatory to the Market Arrangements Code, we consider that market participants should make sure that the market operator does facilitate this exercise. For example, companies are required to submit consistent, validated data to the market operator for financial settlement purposes. This means a number of metrics that we would be interested in monitoring are already available in the CMOS in a consistent format which can be interrogated using the system's reporting tools, without us requesting that information from individual companies – such as the allocation of supply points between retailers, which will help us determine market share. It also means that any definition or segmentation based on such data would apply consistently to the various companies, which should reduce variation in the data and remove potential inaccuracies from our monitoring activity.

Appendix 1 describes the kind of information we expect to see from the market operator and further detailed reporting that we would like to see develop from 1 April 2017. We welcome views on our selection of metrics.

Companies in the water sector, and those newly entering it as retailers, have a unique opportunity to maintain and build trust and confidence in a newly competitive market by demonstrating best practice in transparency on how the market is performing. This transparency is important but we acknowledge that transparency in competitive markets can also facilitate coordination between market participants and lead to collusion and other anticompetitive conduct. We have considered this issue and do not think that the market monitoring and transparency we anticipate will create a significant risk in this respect. This is mainly because no tariff information is shared between market participants through CMOS and, on a transaction by transaction basis, the market operator does not bring competing market participants in direct contact with each other. We also note that it is incumbent on market participants and on the market operator to ensure their compliance with competition law.¹

¹ We are currently [consulting](#) on our approach to the application of the Competition Act 1998 (CA98).

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.

Retailers

There will potentially be two types of retailer when the market opens: existing water companies' retail businesses and holders of water supply and/or sewerage licences (WSSLs). This section applies to both types of retailers, except where a small company exemption applies. We describe this exemption below.

We expect that a lot of the information that will support our monitoring could come from the market operator, reducing both duplication and the burden on retailers. However, there are aspects of the market that the market operator will not have sight of. Retailers also have their own obligations as set out below. To understand how the market is functioning, we will still need retailers to provide us with some information.

We propose asking retailers to provide us formally with information once a year. Experience from other markets has highlighted the importance of regular assessment and analysis but we are also mindful of keeping any reporting burden proportionate. We commit to re-assessing the frequency (and content) of information provision on at least an annual basis.

Retailers have told us they would prefer to understand what information we require from them in advance of them needing to send it, and so we will tell retailers what form this information will take at the beginning of each year. We describe the kind of information we expect to see from retailers in [Appendix 2](#). We welcome views on this.

At the stakeholder workshop we held on 11 October we heard from retailers that certain ways of segmenting data are easier to do than others. Retailers voiced particular concerns with respect to identifying micro-businesses. We note that in order to comply with the Customer Protection Code of Practice, retailers should be able to identify whether a customer is a micro-business or not. In cases where

retailers find it difficult to generate the exact segmentation of the data we are seeking in the timeframe we are proposing, we expect them to tell us how they will get as close as possible to meeting our needs as part of their response to this consultation.

Retailers' obligations

All retailers will need to obtain and comply with a new licence from Ofwat before they can use the supply system and/or sewerage system of an appointee to provide retail services to their customers. This licence is known as the water supply licence or a sewerage licence depending on the retail services to be provided. We refer to both types of licences as WSSLs.

Retailers and wholesalers in the new market must comply with the Wholesale Retail Code (WRC). The WRC is a statutory code which sets out the rules (including business terms, operational terms and market terms) which are to apply between wholesalers and retailers. In line with the relevant statutory provisions, the WRC now contains the terms and conditions of a wholesale contract, thus giving contractual effect to the WRC.

Retailers must also comply with the Customer Protection Code of Practice to make sure that businesses, and in particular micro-businesses, are protected and not disadvantaged in areas such as billing, supply and tariffs.

At the stakeholder workshop, retailers also held strong views as to which data should be sought and which should not. We agree that as a general principle we will aim to only ask retailers to provide information they should already hold as part of their day to day operations, and which isn't already held by the market operator. We would welcome further views on the data that would be useful and appropriate to collect from retailers, including the frequency and format of this data.

In addition to our regular information gathering, retailers will still be expected to inform us as soon as they become aware of a possible contravention of their licence or code obligations or a service issue. This should be done immediately upon discovery.

We expect all companies, regardless of scale and size, to be ready for the market to open. But smaller water companies and those whose area is wholly or mainly in Wales will have fewer customers eligible for the competitive business retail water market. Keeping to the principles of better regulation, we have considered how to apply the market monitoring arrangements proportionately to these companies. We

will continue to keep this under review, in particular if certain companies are granted derogations from requirements of the market codes which would be inconsistent with them being able to provide some information under our monitoring framework.

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; and
- 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.

Customer insight

The priorities, views and experiences of customers are essential in understanding whether, and how, the market is functioning effectively and delivering for customers. One of the ways we intend to do this is through regular surveying of a sample of eligible customers (not just those who have switched retailer.) The survey will provide:

- performance metrics, eg what percentage of customers are aware of the market;
- an understanding of what customers actually want from the market, eg what a good search and switching service looks like; and
- customers' experiences of the market, eg has switching been a good experience, or have their issues and complaints been dealt with effectively?

The information we intend to capture includes:

- overall satisfaction levels;
- awareness of the choices customers have in the market;
- perception of ability to make meaningful comparisons between retailers, third party intermediaries, and their products or services;
- knowledge and actual experience of ability to renegotiate existing contracts;

- satisfaction with the inter-provider and intra-provider switching processes, including available information and time taken;
- satisfaction with the range and nature of products offered; and
- use of and satisfaction with any third party intermediaries, including for information gathering and switching purposes.

Our current proposal is to carry out this survey annually.

Informal monitoring

In addition to the use of formal monitoring tools described above, we have also considered the benefits of using more informal mechanisms. These may be more sophisticated in capturing publicly available sources of information than our formal tools. In particular, they could:

- alert us to news items, issues on social media regarding selling practices, frequently asked questions, initial switching successes and emerging market trends;
- enable us to share insights with customers, their representatives and market participants; and
- allow us to respond with our thoughts, and highlight successes and concerns in an agile way that would enable and encourage improvement.

Such a mechanism or tool may also add significant value to the market by creating a means of interaction which is not expected to prompt or lead to direct regulatory action such as enforcement, but which would facilitate more informal exchanges of views (within reasonable and appropriate bounds). It could also give suppliers in the market an opportunity to become aware and, if necessary, respond to emerging issues before they become a matter of sufficient concern to require the use of more formal intervention mechanisms. This could provide a proportionate, effective and timely means of maintaining and building trust in the newly competitive market, which is essential if it is to succeed.

We are considering ways in which such informal monitoring could be developed appropriately. The Open Water website might provide us with an appropriate platform. For example, it could potentially:

- collect and display social media and news items about the market in real time;
- provide a portal for customers, their representatives and market participants to log concerns; and/or
- provide a means for us to communicate our reaction to the market.

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.

Third party intermediaries

Third party intermediaries are common in the energy market and the financial services market. In the energy market, they are organisations or individuals that give energy related advice, aimed at helping customers buy energy and/or manage their energy needs. Third party intermediaries include switching sites, energy brokers and any company that offers support with energy procurement.

We expect to see similar services being offered in the water business retail market. As such, third party intermediaries will be a valuable source of information on market activity, complementary to that coming from retailers and the market operator. We recognise that although third party intermediaries are not licensed by Ofwat, they have as much reason as any other market participant to make sure that the market is successful, transparent and trusted. We will continue to work with third party intermediaries on the best ways for them to participate in our monitoring to achieve this.

In general, we would like to monitor the number of third party intermediaries active in the market, the number of customers they have, the type of services they are offering, customer satisfaction with their services and their interaction with retailers.

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.

3.3 Segmentation

Lessons from other markets tell us that some issues will affect the whole market, while others will affect only a subset of it. So it is important not only to look at the market as a whole, but to examine a number of different segments, which could include the following.

- Customer type – segmented either by business size (large businesses, small and medium-sized enterprises and micro-businesses), water use or value. This is likely to make monitoring more complex, but it is important to understand how the market is working for specific customer types. We are particularly keen to understand how micro-businesses are treated. Retailers have very specific standards to meet for micro-business customers, as set out in the Customer Protection Code of Practice.
- Wholesaler area – there may be a large number of retailers, but there could still be limited competition in some regions. Looking only at the national picture may mask local issues. Each supply point is linked to both a retailer and a wholesaler, so it should be possible to segment the data from both the market operator and retailers by wholesaler area and consider the implications of any such differentiation.
- Retailers with and without an existing customer base when the market opens – how easy it is for new participants to enter the market and build their businesses, compared to retailers with an existing customer base, will be an important factor in the success of the market.

We will need to obtain information on all those segments. This will have implications for the data that retailers need to supply to the market operator and how we approach the sampling for the survey. We set out in [Appendix 2](#) how we think specific data from retailers will need to be segmented.

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.

3.4 Processing and reporting information

We want to achieve a monitoring framework that, overall, is agile and responsive. To do so, our information gathering and reporting will need to involve a mixture of reporting to regular milestones and ad hoc activity.

At present, we are planning to review the information received from the market operator on a monthly basis, taking action if appropriate. We would supplement this information with evidence from retailers, third party intermediaries and a customer insight survey on an annual basis. We aim to publish a high level 'state of the market' report on an annual basis. We currently anticipate taking a more in-depth look at the market as a whole every few years. Should we need to, we would expect

to request extra information from market participants in between the annual information gathering exercises. We are also prepared to drill down into specific issues outside our annual state of the market reports, for example using our targeted reviews.

4. How we will use the information we gather

In this chapter we discuss how we will use the information that we will acquire through the monitoring framework, in addition to the objectives set.

4.1 Information transparency

It is important that the market not only functions well, but is also seen to function well. Customers, stakeholders and potential market participants all need to feel confidence in the market for it to be a success.

The sort of information mentioned above, at a suitably aggregated level, is useful not only to Ofwat but also to external parties. As well as helping to grow trust and confidence in the market, access to this information could allow issues (new and historic) to be raised that might not otherwise be spotted and provide an opportunity for market participants to deal with them more quickly and proportionately than could be achieved by channelling concerns through the regulator. We are looking at how we can make information available on how the market is working in a timely and accessible way, possibly making use of our website or the Open Water website, as a complement to our more formal regular reports.

Eventually, it may also be possible to provide live application programming interface (API) links between data held on CMOS and analysis providers to make sure market information is as up to date and accessible as possible. In the transport sector, for example, data on transport performance and location has been opened up and companies have used it to create websites and apps to inform customers of issues and delays in real time. Innovation like this is also possible in water and wastewater services. We are continuing to explore the opportunities in this area with the market operator.

That said, when determining what information should be made available, we need to bear in mind the need to protect confidential information, or where small sample sizes might allow for identification of personal or individual company data. We are also mindful that increased transparency could also facilitate collusion in the market and lead to anticompetitive outcomes and consideration of this issue will also inform our future approach to transparency.

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?

4.2 Intervening in the market

We expect market participants to take responsibility for managing any risks affecting people's trust and confidence in their services and the market – including risks affecting the outcomes customers and society expect. We also expect market participants to take responsibility for complying with the market codes, their licence obligations and competition law.

We also expect retailers, third party intermediaries and wholesalers to understand their relationships with both their customers and the market as a whole, and to take responsibility for delivering for their customers, treating customers fairly and keeping the market running smoothly and effectively as far as they are able.

But there may be times when we will need to intervene. Before doing so we will carefully consider whether we are best placed to intervene, or whether others would be better placed to act. We will also consider carefully which of our tools, including both formal and informal, we should use. We will weigh up any short-term benefits of us taking action against the longer-term benefits of letting the market develop organically, so market participants can learn through experience how best to engage with and drive competition among providers.

Our published guidance on our [casework strategy](#) and our [approach to enforcement](#) provide further information on how we will approach such instances.

If we are not satisfied with how competition is developing, or if there are issues causing concern, in addition to our regulatory tools we have the option of referring the market to the Competition and Markets Authority (CMA) for a market investigation. The CMA would then investigate the market, or the provision of goods and/or services we referred, in detail. If it found problems affecting competition, the CMA would be able to impose remedies altering the structure of the market or changing the way it operates.

We enforce competition law with respect to water and wastewater activities in England and Wales concurrently with the CMA, and have published our prioritisation principles for deciding whether to take action under competition law. They are:

- impact;
- strategic significance;
- risks; and
- resources.

Further information can be found in [‘Prioritisation principles: application to the Competition Act 1998’](#).

We will also continue reviewing our market codes to make sure that, as the market develops, those codes remain fit for purpose and do not contain elements acting inadvertently as a barrier to effective competition.

Over time, as the market develops, we expect to strike a balance between:

- formal decisions that establish relevant and helpful precedents in the sector; and
- informal action that potentially resolves concerns effectively, more quickly and proportionately for customers and market participants.

5. Next steps

We welcome comments and feedback on the proposals set out in this consultation on **10 February 2017** by close of business.

Following consideration of comments and feedback we will publish our final approach. We will also write to retailers setting out the nature, timing and format of the information that they will be requested to provide so that they can prepare accordingly.

Appendix 1 – Market data from the market operator

We intend to monitor the following metrics from April 2017.

Data item (as per Code Support Documents)	Rationale	Market structure	Conduct of market participants	Market performance - customer outcomes
Supply point identification (SPID) allocation between retailers, and changes thereof	Allows us to identify trends of individual and groups of premises. Allocation of SPIDs between retailers will allow us to determine switching rates and market share.			
Supply point effective from date	Shows the spread of supply point registrations throughout the year.			
Occupancy status	This will inform us how many vacant premises there are in each wholesaler area. Significant changes year to year or across regions could suggest resilience or demand issues.			
New connection type	This will help us analyse the type of new connections in each wholesaler's area and how this may impact future retailers.			
Building water status	This will inform us how many building water sites there are per wholesaler area or within a specific postcode/region. This would help to indicate future demand and also provide insight into areas where new customers are likely to be active.			
Volume transfer flag	Provides an indication of the number of retailers dealing with multi-site customers.			
Date of invoice in dispute	Provides information on disputes between retailers and wholesalers caused by outstanding debt. Continued disputes suggest the market is not functioning correctly. Insight into which wholesalers and retailers are often in disputes			

Data item (as per Code Support Documents)	Rationale	Market structure	Conduct of market participants	Market performance - customer outcomes
	which could need further investigation.			
Gap site allocation status	This will allow the monitoring of gap sites. These are potentially 'lost revenue' and in the first few years of market opening (based on the experience in Scotland) we would expect to see the number of these decrease as they are identified as billable customers. As such, this would be important to monitor across each wholesale area/postcode.			
Debt: Total outstanding amount on account	This will allow the monitoring of potential bad debts between wholesalers and retailers and should provide an indication of market efficiency and any potential issues with payment.			
Original due date of invoice	This will provide an indication of how long debts take to be resolved, which is important alongside the measure above.			
Erroneous transfer	There are a number of variables for erroneous transfer. These would be used to assess who had triggered the approval/rejection and why across the various retailers and wholesalers. This may identify customer issues, systems issues or business practice issues.			
Customer classification – sensitive customer	This classification identifies sensitive customers, and combined with items such as erroneous transfers, customer type, volume and postcode data would help to identify if there are any specific customers that are at risk.			
Public health-related site-specific arrangements flag	Any sites with plans in place relating to public health issues across the market. Suggests if customers are still being served correctly by the wholesaler. This is important in monitoring compliance with public health issues.			

Data item (as per Code Support Documents)	Rationale	Market structure	Conduct of market participants	Market performance - customer outcomes
Interim supplier allocation status	This is important because if triggered Ofwat would need information on this to ensure minimal disruption to customers.			
Retailer ID by SPID	When a customer switches their retailer ID will change. Tracking these changes will allow us to calculate switching rates.			
Landlord SPID	This provides an indication of the number of premises that are reliant on a landlord for engagement in the competitive market and cannot directly engage. For a given wholesaler ID (area) this would indicate if there was any tendency to provide such aggregated supply points and restrict customers' potential ability to engage in the market. At the retailer level it may help to show if there is a tendency or a shift towards a retailer targeting 'larger grouped customer' premises.			
Interim duty supply flag	This will let Ofwat know the current number of premises in an interim supply situation in any 3 month period. This helps to inform us of customers' engagement with the market.			
Trade effluent	There are a number of indicators – such as Reception Treatment Indicator, Primary Treatment Indicator, Marine Treatment Indicator, Biological Treatment Indicator, Sludge Treatment Indicator, and Ammonia Treatment Indicator – which could be used to monitor these services and how they are being delivered in various locations.			
Wholesaler charges	There is a wide variety of charging variables across the various activities wholesalers provide. These would allow monitoring of how charges change over time.			

Data item (as per Code Support Documents)	Rationale	Market structure	Conduct of market participants	Market performance - customer outcomes
Remote read flag	Provides an indication of how many companies are using remote meter read functionality, improving efficiency and convenience for customers – is a particular wholesaler area better for technology than others? Is a particular retailer better for technology than others? Are they targeting customers using such an offering?			

In line with our **segmentation principles**, the data from the market operator will need to be segmented in the following ways from market opening (where possible).

1. **Customers by volume of water used:** very low, low, medium, high and very high volume users. This would let us compare behaviour such as switching across businesses of various scales.
2. **Retailers by retailer ID:** which would allow us to monitor and understand how individual retailers are interacting and performing.
3. **Wholesalers by wholesaler ID:** which would allow us to monitor and understand how individual wholesalers are interacting and performing – and what activity is like in the existing water companies' regions, as all customers in each these regions will continue to be served by a single wholesaler.
4. **Customers by Standard Industrial Classification (SIC) Code:** not all market participants use this classification, so this would be an experimental segment. If it proves useful it could be improved over time.
5. **Data by top level postcode:** over time, this would give us a more granular view within each wholesaler area, city and local authority. Data may be sparse in the first instance, but our analysis would improve over time.

Appendix 2 – Market data from retailers

We intend to monitor the following metrics from April 2017.

Data item	Rationale	Segmentation	Market structure	Conduct of market participants	Market performance – customer outcomes
Retailers who operate in both the English/Welsh and Scottish markets	Although information on the holders of licences and their authorisations is publicly available, we want to assess which retailers are actively serving customers in each jurisdiction. This will help us determine progress towards the programme success measures.	N/A			
Number of retailers who offer multi-utility billing	This will be important in tracking the evolution of the market.	N/A			
Number of third party intermediaries retailers deal with	Understanding how third party intermediaries take part in the market will be crucial.				
Number of customers on water-only or multi-utility billing	This will allow us to understand the uptake of different kinds of service.	Customer type			
Customers' accounts in debt	This will allow us to monitor potential bad debts between retailers and customers. It should give us an idea of the market's efficiency and any potential issues with payment.	Customer type			

Data item	Rationale	Segmentation	Market structure	Conduct of market participants	Market performance – customer outcomes
Assistance for vulnerable/sensitive customers	This will allow us to monitor what help retailers are offering their vulnerable/sensitive customers.	Customer type			
Number of micro-businesses retailers provide services to	We want to make sure micro-businesses are fully engaged in the market.	N/A			
Number of micro-businesses exercising their right to cancel a contract during a cooling off period	This is a specific requirement of the Customer Protection Code of Practice and will give us a useful insight into the effectiveness of the switching process as a whole.	N/A			
Volume of customers being supplied pursuant to statutory schemes of terms and conditions, in the case of licensed retailers; or an appointee's statutory duties in the case of integrated retailers	This will help us to understand how many customers are actively engaged in the market.	Customer type Wholesaler region			
Volume of customers who renegotiate their existing contracts	In a healthy market, customers can not only switch between suppliers, but also negotiate better terms with their existing supplier.	Customer type			
Methods of how customers have engaged with the retailer (eg directly or through a third party intermediary)	This will help us understand how customers are engaging with the market.	Customer type			

Data item	Rationale	Segmentation	Market structure	Conduct of market participants	Market performance – customer outcomes
Consumption data/water efficiency measures	This gives us an idea of how innovative the market is. It is also a key measure of success for the programme.	Customer type Wholesale r region			
Tariff data	This will help us see if there is genuine innovation and efforts to meet customers' differing needs.	Customer type Wholesale r region			

Ofwat (The Water Services Regulation Authority) is a non-ministerial government department. We regulate the water sector in England and Wales. Our vision is to be a trusted and respected regulator, working at the leading edge, challenging ourselves and others to build trust and confidence in water.

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