

Our Ref: JD/Ofwat/cons

Your Ref:

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Dear Sir

Monitoring the business retail market from April 2017

We appreciate the opportunity to provide our feedback on your proposed approach to monitoring the competitive business retail market. SES Business Water is a retailer currently operating in England, Wales and Scotland and is the Associated Retailer of Sutton and East Surrey Water. The proposals you are making will therefore have a direct impact on the cost of operating our business.

It is a regulators role to monitor the effectiveness of markets and take action where market participants are not following the rules. We agree that Ofwat needs access to information and data so that it can adequately perform this function. We are however concerned that the proposed metrics will not provide the right information to allow Ofwat to perform this function.

If these proposals do not change then there is a significant risk that additional cost and regulatory burden is placed on market participants and no benefit will be gained. With the market operator already costing about £10 per customer (out of an average gross margin of £120) proposing additional requirements which come at a cost has the potential to erode any savings that competition can drive. The requirements could, at worst, be a barrier to entering the retail market if the burden perceived and the low margins available create an unattractive environment for potential new entrants.

Information gathered from the market operator and/or retailers should be limited to providing a picture of the market, including switching rates and market share. This, we expect, could be provided by the market operator with limited additional cost. Any additional requests for data come at a significant cost to all market participants and therefore we would urge Ofwat to reevaluate whether each proposed metric will further the objective set out and provide an analysis of the costs and benefits of providing it.

True insight on whether market participants are acting within the rules and the laws required will not come from metrics set out in advance but will come from other sources – customer complaints, market code compliance issues or failures, whistle blowing.

One area we believe requires closer scrutiny by Ofwat is the completeness of data provided by Wholesalers as part of establishing the market. We are already identifying issues with gaps in data provided by Wholesalers for market opening that is significantly impairing our ability to provide prices and quotations to customers actively engaging in the market seeking to switch supplier. We would therefore urge Ofwat to request a report from MOSL on the gaps existing in the market dataset and to take immediate and direct action to require Wholesalers to fulfil the data requirements within a given timeframe. At best this is constraining the amount of market activity that will occur and at worst could be seen as a deliberate attempt by Wholesalers to protect market share of their Associate (or incumbent business).

Annex 1 provides a more detailed response to the questions you raised and our views on the specific metrics proposed. If you would like to discuss any aspect of this response further please get in touch.

Yours faithfully

A handwritten signature in black ink, appearing to read 'J Downer', written in a cursive style.

Jeremy Downer
Market Reform Delivery Director

Response to questions posed

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

Understanding whether competition is functioning properly is a sensible and reasonable objective and what customers would expect the regulator to be doing. But, the consultation fails to draw a link between the reporting requirements you are proposing and how they will help you achieve this objective.

The metrics being proposed in the monitoring framework are wide ranging and many do not appear to further the objective stated. It appears that Ofwat is taking the approach of more information is better than less without taking into account the consequences in terms of the cost to the market of gathering and reporting such information. A headline objective alone does not give us the clarity we need to support the burdensome regulatory reporting requirements being proposed.

Under “effective competition” in section 2.3 you list the things that you will need do as part of the monitoring framework. This list fails to acknowledge that the regulatory approach taken may be the barrier to effective competition and instead focuses on increasing interventions to resolve the perceived problem. The final framework should acknowledge this gap by clarifying that regulatory interventions could include removing or changing aspects of regulation.

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

Monitoring the market structure and conduct of participants is what you would expect the role of a regulator to be. What this means for the actual data collected needs to be driven by clarity in what observed information would lead you to consider that there was a failure in the market.

To meet the objective of understanding whether competition is functioning properly we do not think it is necessary to place reporting requirements on market participants related to the factors you list under “market performance”. Effective competition is not driven by the areas listed and therefore monitoring these areas will not further the objective stated.

Our experience already is that market data for England and Wales is in many cases not complete and that this is generating a barrier to enabling us and other retailers to price effectively in some areas. We would urge Ofwat to consider a metric using data provided by MOSL that identifies the number of gaps in market data uploaded by Wholesalers. We would then further urge direct action being taken with Wholesalers who have an unreasonable amount of data missing from the market, and a requirement that this data gap is resolved within a short period of time. The quantity of data that is quite obviously missing from the market (and subsequently data that may be found to be inaccurate) will have a substantial impact on the level of market activity that occurs, and of the customer experience as part of any ambition to switch retailer.

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

We provide some specific feedback on the proposed metrics below. In general, the answer to this depends on whether the market operator's systems can provide this information and at the frequency requested with no, minimal or significant reconfiguration.

If there is no additional cost then we would have no concerns with the market operator providing this information to Ofwat, although we remain unconvinced that all the metrics will help achieve the framework's objective. If there is a cost to providing this information then these costs need to be evaluated against the benefits it will drive. The cost of the market operator is already significant – approximately £10 per customer with average gross margins of just £120 – and therefore we feel that a full evaluation of the benefits of imposing any additional costs needs to be completed before finalising the reporting requirements.

In relation to the metrics proposed:

- It is inefficient to request information from the market operator that you already receive through other means. For example, wholesale charges will be available from appointed companies' wholesale charging schemes.
- It is not appropriate to request information that does not further the objective of understanding whether competition is functioning effectively. For example, data on provision of trade effluent services or building water status does not provide any insight into the effectiveness of competition.
- Anything that requires retailers to report on a basis where the information is not routinely stored in its business will introduce disproportionate cost compared to the perceived benefits. A good example of this is reporting of micro-businesses. This information will be difficult to collect and maintain for Retailers.

Q4. What information will retailers hold that will help us achieve our monitoring objectives?

We have the following observations on the individual metrics proposed:

- Information on how many customers a retailer has in Scotland – This is not relevant for meeting the objective of the monitoring framework (which relates to England and Wales). As noted in the consultation this information is to help Ofwat assess progress towards the programme success measures and therefore should not form part of a consultation on monitoring the effectiveness of competition.
- Multi-utility billing indicators – Again this is not a relevant factor to monitor in order to meet the objective of monitoring the effectiveness of competition. We can see why this may be of interest to Ofwat but, on the basis that the information to be included in the monitoring framework requirements must further the frameworks objectives, we see no place for such metrics.
- Third party intermediaries dealt with – The ability to report this metric will depend on what is meant by "dealt with".
- Volume of customers being supplied on a statutory scheme of terms and conditions – This is not a relevant metric. The consultation states that this will be used to understand how many customers are actively engaged in the market which we take to mean that Ofwat will consider customers on such a scheme to be inactive. We

disagree with this conclusion as a customer may be engaged and have chosen to stay on such a scheme and this metric will therefore provide little insight. In addition, we would take the opportunity to highlight the difference that exists between gross margins within company areas. These can be as little as 4% to greater than 12%. We would expect to see this reflected in how much market activity occurs in each area. We would urge Ofwat to consider whether the cost allocations applied by each Wholesaler do truly represent a level playing field.

- Consumption data – This has limited, if any, relevance to measuring the effectiveness of competition. If Ofwat can make a case for its relevance then it should be collected via the market operator as this is more efficient than requesting it from all retailers.

We discuss the proposals on segmentation in response to question 7.

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.

We see benefit in all matters relating to the regulation of the sector being held on one platform – the Ofwat website – as it is the known source of information for the water sector. Our preference is therefore for Ofwat to communicate their reactions to the market on the Ofwat website rather than use an alternative platform such as the Open Water website.

The proposal to have a portal for customers to log concerns seems to duplicate the role that CCWater play and therefore would seem an unnecessary tool to add to the monitoring framework.

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.

We would suggest that any involvement with TPIs should be undertaken directly with those organisations or the bodies that represent them.

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.

Providing information segmented on Ofwat's definition of a micro-business is not possible. Sutton and East Surrey Water do not currently collect information on the number of employees their customers have. Therefore we will not hold this information for the c. 14,000 customers that we will be the retailer for from April 2017. The cost of sourcing this information from our customers is extremely high and is unlikely to be accurate as a significant proportion of customers will not respond. Based on our experience of engaging with business customers, we estimate that, even if we were to call each customer, less than 30% would respond and be willing and able to provide this information.

It is possible to segment customers based on the volume of water used or the value of their bills – which, for the majority of businesses, is highly correlated with the number of employees.

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?

We support the emphasis placed on transparency and would welcome regular sharing of information gathered on the basis that it is not commercially sensitive.